

**U. S. Department of Education
Office of Career, Technical, and Adult Education
Division of Academic and Technical Education**

**Questions and Answers Regarding the Implementation of the
Carl D. Perkins Career and Technical Education Act of 2006
(Perkins IV)**

This document compiles the full list of Questions and Answers regarding the implementation of the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins IV), as contained in the following non-regulatory guidance memos:

- Version 1.0 – released January 9, 2007
- Version 2.0 – released June 7, 2007
- Version 3.0 – released June 2, 2009
- Version 4.0 – released March 17, 2015

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- Unless otherwise noted, all references to Title I in this document refer to Title I basic grant awards under Perkins IV.
- Sections with more than five questions have been divided with subheadings to promote readability and usability of the document.
- A table of contents has been added to promote usability of the document.

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A. STATE PLANS

General

- A.1 What constitutes an adequate “description” versus an “assurance” in the State plan narrative? How detailed do the descriptions have to be?

A description provides a detailed account of what a State will do or plans to do to meet the various requirements of the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins IV or the Act). Descriptions need to be sufficiently detailed so that individuals who may not be completely familiar with your State or programs (such as federal reviewers or individuals who may attend your State plan hearings) can easily understand how your State intends to implement its career and technical education programs.

An assurance is a written and signed statement that guarantees the State will take certain actions to comply with the Act or Department regulations as appropriate. All assurances that a State is required to submit as part of its State plan are grouped together in section VIII of the draft State plan guide.

- A.2 Is there an expectation that each State will have a “secondary-to-postsecondary transition” or even “programs of study” section in its new State plan (and not just separate secondary and postsecondary narratives as was typical in the past)?

Yes. As required under section 122(c)(1)(A) of the Act, and pursuant to the draft State plan guide, each State must describe the career and technical education activities to be assisted that are designed to meet or exceed the State adjusted levels of performance, including a description of career and technical education programs of study, that may be adopted by local educational agencies and postsecondary institutions to be offered as an option to students (and their parents as appropriate). If a State has not already developed programs of study, it may want to consider submitting a one-year transition plan in which it would only have to describe its planning process to develop programs of study.

- A.3 Can a State indicate in its State plan its intent to allocate funds for a “reserve,” even if it does not yet know precisely how it will use those funds?

Yes. A State may indicate its intent and general plans to allocate funds for a reserve under section 112(c) of Perkins IV in its State plan. If the State plans to use a reserve beginning for program year one (July 1, 2007 – June 30, 2008), the State also would indicate the percent to be allocated for the reserve on the budget forms provided in the draft State plan guide.

Transition Plans

- A.4 What is the Department's rationale for providing fewer requirements of States that opt to submit a one-year transition plan rather than a six-year plan?

The Department proposed to limit the overall number of items required for a one-year transition plan to enable States to focus their time and resources on implementing changes in their State's policies, programs, and accountability systems to fully meet the requirements of the Act.

- A.5 If a State chooses to do a one-year transition plan, could hearings occur as part of that process?

Yes. Nevertheless, section 122(a)(3) of the Act requires a State to hold public hearings on the complete State plan, so a State would have to conduct hearings once the State has developed its remaining five-year State plan.

- A.6 Can a State submit a one-year transition plan that incorporates most of the six-year plan items?

Yes. The draft State plan guide indicates the items that, at a minimum, a State would have to include in a one-year transition plan. A State could include responses to as many other items as it deems appropriate and feasible.

- A.7 If States have a one-year transition plan, do they have to have a new local application ready?

Yes. The draft State plan guide would require each State to submit a copy of its local applications or plans for secondary and postsecondary eligible recipients, which will meet the requirements in section 134(b) of the Act.

Unified Plans

- A.8 Can a State submit a unified plan?

Yes. Under section 122(d)(2) of Perkins IV, a State may choose to submit the postsecondary portion of their new Perkins IV State plan as part of the plan submitted under section 501 of Public Law 105-220. A State also may include the secondary portion of its new Perkins IV State plan only with the prior approval of its State legislature (see section 501(b)(1) of the Workforce Investment Act of 1998). Any State that chooses to submit the postsecondary and/or secondary portion of its new Perkins IV State plan as part of a unified plan must address every item in the draft Perkins IV State plan guide. Any State that wishes to submit a unified plan must follow the instructions and submission

requirements as provided in the Training and Employment Guidance Letter (TEGL) that will soon be issued by the Employment and Training Administration, U.S. Department of Labor.

A.9 Can a State submit a one-year transition plan and then a five-year unified plan?

Yes. A State may chose this option and will need to follow the same submission instructions as provided in A.8 above.

Tech Prep Plans

A.10 Does a State need to complete a separate tech prep plan?

No. On the contrary, section 201(c) of the Act requires each eligible agency desiring an allotment under Title II to submit its application for funding as part of its State plan under section 122 of the Act (which establishes the requirements for a State’s plan for its Title I basic grant funds).

A.11 Does a State need to specify in its State plan its intent to consolidate all or a portion of its tech prep and basic grant funds?

Yes. A State would indicate the amount of Title II tech prep funds it intends to consolidate with its Title I basic grant funds on the designated budget forms provided in the draft State plan guide. Any State that plans to use all or a portion of its Title II tech prep funds also would complete the designated narrative items in the draft State plan guide.

State Plan Hearings

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.

Programs of Study

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

Student Definitions

- B.1 Will the Department issue definitions for a secondary and postsecondary “participant,” “concentrator,” and “completer?” If so, to what extent will OVAE rely on the accomplishments from the Data Quality Institutes (DQIs) in determining these definitions?

The Department is reviewing the summary document submitted by States to the Department following the Data Quality Institutes and is working on further guidance for student definitions. The review will examine the extent to which the definitions in the summary document are aligned to the requirements of the new Act, including those incorporated from the Elementary and Secondary Education Act of 1965 as amended by the No Child Left Behind Act of 2001 (ESEA or NCLB).

Baseline Data

- B.2 How can baseline data (particularly for postsecondary) mean anything from two years ago (FY 2005-2006) if you have new measures and new definitions in this law, or if you did not collect data on those populations in the past?

In the draft Perkins State plan guide, the Department would require a State to generate baseline data for each of its core indicators of performance (except for academic attainment and graduation rates) using its new student definitions and measurement approaches and most recent data available. Baseline data is required in order to provide a sound basis for reaching agreement with a State on performance levels for the first two program years as required under section 113(b)(3)(A)(iii). In the draft Perkins State plan guide, the Department would not require a State to generate baseline data for its core indicators of performance for academic attainment and graduation rates if a State were to use as its performance levels for these Perkins IV indicators the State’s annual measurable objectives (AMOs) as approved under the ESEA. The Department will further clarify its expectation of States for generating baseline data when it issues its final State plan guide.

- B.3 Can a State use different program years when reporting its baseline data for each of the core indicators (i.e., use Program Year 2005-06 for academic attainment indicators and Program Year 2006-07 for technical skill indicators)?

Yes. A State should use its most recent data available to generate baseline data for each of its core indicators of performance, thereby enabling the State to set realistic performance levels beginning for PY 2007-08. However, as noted above, in the draft Perkins State plan guide, the Department would not require a State to

generate baseline data for its core indicators of performance for academic attainment and graduation rates if a State were to use as its performance levels for these Perkins IV indicators the State's annual measurable objectives (AMOs) as approved under the ESEA.

Core Indicators – General

- B.4 Will the Department issue definitions for each of the core indicators? If so, how much will OVAE rely on the work of the Next Steps Workgroup and Data Quality Institute (DQI) in developing its definitions? When will this information be released?

The Department is reviewing the summary document submitted by States to the Department following the Data Quality Institutes and is working on further guidance on valid and reliable definitions for each of the core indicators. The review will examine the extent to which the definitions in the summary document are aligned to the requirements of the new Act, including those incorporated from the ESEA.

- B.5 Why is the Department not taking a proactive stance on what should be the definitions and measures for the core indicators so that reliable and valid data can be gathered and reported?

The Department is examining options for providing guidance to States on definitions and measures for the core indicators to ensure that data are valid and reliable, and consistent across States to the extent possible.

Core Indicators – Academic Attainment

- B.6 Many States administer their Statewide academic assessments under NCLB in 10th grade, but many career and technical education programs do not begin until 11th grade. How does a State identify its career and technical education students when they are not yet concentrators? Is a State supposed to measure “concentrators” or any student who takes a career and technical education course?

The Department will soon issue further guidance on valid and reliable student definitions for the core indicators of performance, including academic attainment.

- B.7 Why is there not a separate measure of academic attainment for career and technical education students “at the end of their programs?” Why is the Department not asking for more than what is in the law?

Section 113(b)(2)(A)(i) of the Act specifically requires a State to measure career and technical education student's attainment of academic standards using the proficient level or above on the academic assessments that a State implemented under section 1111(b)(3) of the ESEA as amended by NCLB.

If a State has another valid and reliable measure of academic assessment (other than its NCLB assessment) that the State administers at the end of a career and technical education student's program (e.g., at the end of 12th grade), then the State may identify this as an "additional indicator" in its State plan (see Section 113(b)(2)(C)).

Core Indicators – Technical Skill Attainment

- B.8 What is the expectation of the Department for how postsecondary technical skills attainment will be assessed? Do States now need to use norm-referenced assessments?

The Department will soon issue further guidance on valid and reliable definitions for each of the core indicators, including postsecondary technical skill attainment.

- B.9 Can a State use the technical skill assessments it used in the past under the Carl D. Perkins Vocational and Technical Education Act (Perkins III)?

Section 113(b)(2)(D) of the Act allows a State to use performance measures that it developed under the previous Perkins statute to meet the new requirements of the Act, provided that those measures are valid and reliable for a particular indicator and otherwise meet the requirements of section 113 of Perkins IV as amended. Therefore, a State may use the technical skill assessments that it used under Perkins III as long as those assessments are valid and reliable measures of student attainment of career and technical skill proficiencies that are aligned to industry-recognized standards, if available and appropriate (see section 113(b)(2)(A)(ii) and (b)(2)(B)(i)).

- B.10 How can a State obtain baseline data for secondary technical skill attainment if it has not used technical skill assessments in the past?

A State that has not used technical skills assessments in the past may want to consider submitting a one-year transition plan, so it could use the first program year under the new Act (July 1, 2007 – June 30, 2008) as a transition year to develop and/or administer these assessments, as well as generate baseline data. The State may then begin to reach agreement with the Department on performance levels, beginning with performance levels for the second program year (July 1, 2008 – June 30, 2009).

- B.11 What should a State do if it does not have technical skill assessments in every program area?

A State that does not have technical skill assessments in every program area may want to consider submitting a one-year transition plan, so it could use the first program year under the new Act (July 1, 2007 – June 30, 2008) as a transition

year to begin developing and implementing a plan for implementing technical skill assessments in more program areas and for more students pursuant to the draft State plan guide.

Core Indicators – Secondary Completion

- B.12 What is the difference between the secondary indicators of 3S1 (high school diploma), 3S2 (General Education Diploma or other State-recognized equivalent), and 3S3 (a proficiency credential, certificate, or degree, in conjunction with a high school diploma)?

The Department will soon issue further guidance on valid and reliable definitions for each of the core indicators, including those for secondary completion.

Core Indicators – Nontraditional Participation and Completion

- B.13 Would the Department consider combining core indicators 5P1 (nontraditional participation) and 5P2 (nontraditional completion)?

The Department will consider all public comments received pursuant to the October 4, 2006, notice inviting public comment on the draft State plan guide, including on the core indicators of performance related to nontraditional participation and completion.

Performance Levels – State Level

- B.14 Will a State be able to “start over” in negotiating its performance levels for each of the core indicators?

Yes. In fact, it is likely that most States will need to change their student definitions, measurement definitions, and measurement approaches for one or more of their core indicators of performance and, therefore, will need to generate new baseline data to reach agreement with the Department on adjusted performance levels that promote continuous improvements by the State on individual indicators. The Department will further clarify its expectation of States for negotiating performance levels when it issues its final State plan guide.

- B.15 If a State performance level is the “average,” can high-performing local recipients accept the “lower number/the average” of the State?

No. Under section 122(c)(10)(B) of the Act, each State must describe its own policy and procedures for reaching agreement on local adjusted levels of performance for its eligible recipients. However, local adjusted levels of performance, at a minimum, must require the eligible recipient to continuously make progress toward improving the performance of career and technical education students as required by section 113(b)(4)(A)(i)(II) of the Act.

- B.16 For the 1S1 (academic attainment in reading and language arts) and 1S2 (academic attainment in mathematics, does a State have to use its Annual Measurable Objectives (AMOs) as negotiated under No Child Left Behind, or can the State negotiate other levels?

The draft State plan guide provides that the Department strongly encourages a State to reach agreement on “adjusted performance levels” for the core indicators of academic attainment and graduation rates that are the same as the State’s AMOs developed under NCLB to ensure that the State’s schools are making AYP as required under section 1111(b)(2) of NCLB. However, a State may not have established AMOs for graduation rates under NCLB, or a State may wish to propose performance levels for these core indicators that are different from the State’s AMOs. If so, the State must provide baseline data using its most recent year’s achievement data or graduation rates under NCLB, propose performance levels, and reach agreement with the Department on “adjusted performance levels.” The Secretary is considering whether to issue regulations requiring a State to agree to “adjusted performance levels” under the Perkins Act that are the same as the State’s AMOs for academic attainment and graduation rates under the NCLB. If the Secretary decides to regulate on this issue and adopts final rules, a State may be required to amend its State plan.

- B.17 Does a State have to demonstrate “continuous growth” as it sets its performance levels for each of the core indicators as in the past under Perkins III?

Yes. Section 113(b)(3)(A)(i)(II) of the Act requires that each eligible agency reach agreement on levels of performance that “require the State to continually make progress toward improving the performance of career and technical education students.”

Performance Levels – Local Level

- B.18 Do States have to negotiate performance levels under the basic grant program with their local eligible recipients?

A State must negotiate performance levels with its eligible recipients only in cases where an eligible recipient chooses not to accept the State adjusted levels of performance as described in section 122(c)(10)(B) or an eligible recipient must negotiate a different performance level in order for it to meet the requirement that its performance levels, at a minimum, require it to continuously make progress toward improving the performance of career and technical education students as required by section 113(b)(4)(A)(i)(II) of the Act.

- B.19 Will the Department issue guidance to States on how they should negotiate performance levels with their eligible recipients?

No. Under section 122(c)(10)(B), each State must set its own policy and procedures for reaching agreement on local adjusted levels of performance for its eligible recipients in accordance with section 113(b)(4) of the Act.

- B.20 When there is disagreement between locals and the State on performance levels, who decides on what the levels shall be?

Section 122(c)(10)(B) of the Act requires each eligible agency, in consultation with eligible recipients, to describe in its State plan how it will develop a process for the negotiation of local adjusted levels of performance under section 113(b)(4) of the Act if an eligible recipient does not accept the State adjusted levels of performance under section 113(b)(3) of the Act. This process should include actions to resolve possible disagreements between an eligible agency and its eligible recipients on local adjusted performance levels.

- B.21 Should a State factor in size of the geographic area when negotiating performance levels with its eligible recipients?

Each State must set its own policy and process for reaching agreement on local adjusted levels of performance for its eligible recipients in accordance with the Act. Section 113(b)(4)(A)(v) of the Act requires eligible agencies, when establishing local adjusted levels of performance, to take into account such factors as the characteristics of participants, when the participants entered the program, and the services or instruction to be provided. Local adjusted levels of performance also must promote continuous improvement on the core indicators of performance.

Tech Prep Programs

- B.22 Does a State have to negotiate performance levels for its tech prep programs with the Department?

No. There is no requirement in the Act for a State to reach agreement with the Department on performance levels for the indicators of performance for tech prep programs under section 203(e) of the Act.

- B.23 If a tech prep consortia is focusing on a specific cluster, can the section 113 data be aligned to focus on just those areas or all areas?

The Department does not collect annual performance data from States under section 113 of the Act by cluster area; therefore, a State must aggregate section 113 data from its tech prep consortia regardless of the specific cluster area the consortia is focusing on.

- B.24 If a State opts to consolidate its tech prep and basic grant programs, will the State be required to collect and report tech prep data following the first program year (July 1, 2007 – June 30, 2008)?

No. A State would not be required to submit tech prep data to the Department for any program year in which it consolidates all of its tech prep and basic grant funds.

- B.25 Will a State be required to report data in the Consolidated Annual Report (CAR) on the tech prep indicators that the State negotiates with its consortia?

The Department will issue further requirements to States for reporting data on the effectiveness of tech prep programs as required under section 205 of the Act.

- B.26 Do members of a consortium have to report data to the State as separate entities or as a consortium?

The entity that receives funding on behalf of the consortium should report data on the tech prep indicators of performance to the State on behalf all members of the consortium.

- B.27 Does a State have to disaggregate data by special population categories for its tech prep programs?

Under section 204, there is no requirement for a State to disaggregate its performance data for its special population categories, although a State may opt to include such a requirement in its tech prep accountability system.

- B.28 Can the Department sanction a State if its tech prep programs fail to meet State adjusted levels of performance under Title I? Can the Department sanction a State under Title II?

A State must report data to the Department for each of the core indicators of performance under section 113(b)(2) of the Act for its tech prep students; however, under section 123 of the Act, the Department has discretion as to whether or not it will sanction a State that fails to meet its adjusted performance levels under section 113 of the Act, and section 123 does not apply to the data collected by a State on the tech prep program indicators of performance under section 203(e).

- B.29 Will the Department provide definitions for the terms “valid” and “reliable?”

Not at this time. Sections 113(b)(2)(A) and (B) of the Act require each State to develop and identify in its State plan valid and reliable measures for each core indicator of performance for career and technical education students the State identifies in its State plan. In some instances, the Act prescribes the measures a

State must use for the core indicators. For those indicators, no further explanation of what measures may be used is necessary. For example, in section 113(b)(2)(A)(i), the Act requires a State to measure the academic proficiency of secondary career and technical education students using the standards and assessments in sections 1111(b)(1) and 1111(b)(3) of the Elementary and Secondary Education Act of 1965 (ESEA). Similarly, the Act requires States to measure student graduation rates as described under section 1111(b)(2)(C)(vi) of ESEA. In addition, section 113(b)(2)(B)(i) of the Act requires a State to use industry-recognized standards, if available and appropriate, to measure career and technical education students' attainment of challenging career and technical skill proficiencies.

A State must not only include in its State plan the measures it intends to use for each core indicator but also must describe in its State plan how its definitions and measures are valid and reliable and reflect high standards and real improvements in performance. A demonstration of a measure's validity is evidence that the measure assesses what it intends to assess. A demonstration of reliability is evidence that the results of an assessment are dependable and consistent. The Department's non-regulatory guidance, Student Definitions and Measurement Approaches for the Core Indicators of Performance Under the Carl D. Perkins Career and Technical Education Act of 2006, provides recommendations for student definitions and measurement approaches for the core indicators of performance that we believe will yield valid and reliable data on the performance of career and technical education students. The Secretary also will ensure the validity and reliability of measures for each core indicator by providing technical assistance to States when reaching agreement on performance levels.

B.30 Can a State use its 3-year rolling average as its baseline data for the core indicators of performance?

No. A State must use its most recent year of actual data to establish its baseline for the core indicators of performance.

B.31 Are students eligible under section 504 of the Rehabilitation Act of 1973 (as amended) (Section 504) considered "students with disabilities" for purposes of reporting accountability data for special populations under Perkins IV.

Yes. Section 3(17)(A) of Perkins IV defines an "individual with a disability" as an individual with any disability as defined in section 3 of the Americans with Disabilities Act of 1990 (ADA). Section 504 parallels the definition of an individual with a disability under the ADA; thus, Section 504 eligible students must be considered "individuals with disabilities" for purposes of reporting accountability data for special populations under Perkins IV. Section 504 requires a school district to provide a "free appropriate public education" (FAPE) to each qualified student with a disability who is in the school district's jurisdiction, regardless of the nature or severity of the disability. FAPE consists of the

provision of regular or special education and related aids and services designed to meet the student's individual needs. Implementation of an Individualized Education Program developed under Part B of the Individuals with Disabilities Education Act (IDEA) is one way that school districts may meet their FAPE responsibilities under Section 504.

- B.32 Will a State be required to report data in the Consolidated Annual Report (CAR) on the tech prep indicators that the State negotiates with its consortia?

Yes. The Department will be issuing a new Consolidated Annual Report (CAR) form that will require each State to report aggregate data on the indicators of performance for tech prep programs assisted under section 203(e) of the Act. This report, which also will require States and local recipients to disaggregate tech prep students in the data reported under section 113 of the Act, will satisfy each State's requirement to annually prepare and submit to the Secretary a report on the effectiveness of tech prep programs as required under section 205 of the Act.

Improvement Plans

- B.33 Must a State develop and implement an improvement plan?

Section 123(a)(1) of Perkins IV requires any State that fails to meet at least 90 percent of a State adjusted performance level (90 percent threshold) for any of the core indicators of performance to develop and implement a program improvement plan for each indicator for which the State failed to meet the 90 percent threshold.

- B.34 When must a State implement its improvement plan for any core indicator of performance for which the State failed to meet the 90 percent threshold?

A State must implement its improvement plan in the first program year following the program year for which the State failed to meet the 90 percent threshold for one or more of the State adjusted levels of performance. For example, if the State failed to meet the 90 percent threshold for one or more of its adjusted levels of performance on a core indicator of performance for program year one (July 1, 2007, through June 30, 2008), the State must develop and implement an improvement plan in program year two (July 1, 2008, through June 30, 2009).

- B.35 How and when must a State submit to the Secretary its improvement plan for the core indicators of performance for which the State failed to meet the 90 percent threshold?

A State must submit its improvement plan as part of the State's narrative report in the State's Consolidated Annual Report for the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins IV) for the State Basic Grant (Title I) – CFDA 084.048A and Tech Prep Grant (Title II) – CFDA 84.243A, OMB NO:

1830-0569 (CAR). A State must submit its improvement plan to the Secretary by December 31 following the program year for which the State failed to meet the 90 percent threshold for one or more of the State adjusted levels of performance. For example, if the State failed to meet one or more of its adjusted levels of performance for the program year beginning July 1, 2007, through June 30, 2008, the State must submit an improvement plan to the Secretary by December 31, 2008.

B.36 What elements must the improvement plan contain?

A State's improvement plan must, at a minimum, include the following items:

- The core indicator(s) of performance for which the State failed to meet the 90 percent threshold.
- The categories of students for which there were quantifiable disparities or gaps in performance compared to all students or any other category of students.
- The action steps which will be implemented, beginning in the current program year, to improve the State's performance on the core indicator(s) of performance and for the categories of students for which disparities or gaps in performance were identified.
- The staff member(s) in the State who are responsible for each action step.
- The timeline for completing each action step. See instructions in the CAR (OMB No: 1830-0569).

B.37 Who must a State consult during the development and implementation of the State's program improvement plan?

Section 123(a)(1) of Perkins IV requires the State to develop and implement its improvement plan in consultation with appropriate agencies, individuals, and organizations. The Department believes that, generally, section 123(a)(1) requires a State to consult with those agencies, individuals, and organizations that were impacted by the State's failure to meet a State adjusted level of performance and to work with these groups in implementing its plan to improve student performance.

B.38 What is the Secretary's timeline for reviewing and approving the State's improvement plan?

The Secretary will approve a State's improvement plan and incorporate the plan into the State's July 1 grant award for the subsequent program year after the State makes any revisions to the plan that the Secretary finds necessary. For example, if a State fails to meet the 90 percent threshold for one or more of its performance levels for program year one (July 1, 2007, through June 30, 2008) and submits its improvement plan in its December 31, 2008, CAR report, the Secretary would approve the State's improvement plan and incorporate the plan into the State's

July 1, 2009, Perkins grant award notification after the State makes any necessary revisions to the plan.

B.39 Should the State delay the implementation of its improvement plan until the Secretary approves the plan?

No. Section 123 of Perkins IV requires a State to implement its improvement plan no later than the first program year following the program year for which the State failed to meet the 90 percent threshold for one or more of the State adjusted levels of performance. Further, for the State to have as much time as possible for its improvement activities to improve its performance, the Secretary strongly recommends that the State begin its improvement activities as soon as it determines that it has failed to meet at least 90 percent of its level of performance for any core indicator. A State must implement any revisions that the Secretary determines are needed to the State's plan upon notification that the Secretary has approved the State's revised improvement plan.

Performance Level Negotiations

B.40 What factors do the Secretary and a State consider when negotiating the State's adjusted levels of performance for the State's core indicators of performance?

Section 113(b)(3)(A)(vi) of Perkins IV requires that, when reaching agreement on the State's adjusted levels of performance for its core indicators of performance, the Secretary and a State take into account the following factors:

- How the proposed levels of performance compare with the State adjusted levels of performance established for other States, taking into account the characteristics of participants, when the participants entered the program and the services or instruction to be provided.
- The extent to which the State adjusted levels of performance promote continuous improvement on the core indicators of performance.

Congress clearly expects that the Secretary would not impose a minimum or arbitrary across-the-board increase in any State performance targets as the means for ensuring continuous improvement. Instead, the Secretary will also consider, for example, the State's performance compared to the State's prior performance, its improvement plans, changes in baseline data, measurement methods used by the State that may have affected performance levels, and the number of students served. See H.R. Conf. Rep. No. 109-597, 2006, #101, p. 89.

B.41 May a State request a revision to one or more of its adjusted levels of performance and, if so, under what conditions?

Yes. A State may request that the Secretary revise one or more of its agreed-upon adjusted levels of performance if an unanticipated circumstance arises in the State

that results in a significant change in the factors that the Secretary and the State considered at the time they negotiated the State's adjusted levels of performance. See section 113(b)(3)(A)(vii) of Perkins IV.

B.42 What would be an unanticipated circumstance?

The Secretary will consider requests to revise a State's adjusted levels of performance on a case-by-case basis, but unanticipated circumstances may include, for example:

- Methodological changes in the way the State collects data, such as State-mandated changes in data-gathering methodologies, or changes in measures of academic achievement;
- Significant shifts in population;
- Economic changes such as spiraling unemployment rates; or
- Natural disasters that close programs for significant periods of time.

B.43 What is the timeframe for a State to request a revision?

If an unanticipated circumstance affects a State's performance for an indicator of performance for the current program year, a State may request a revision of the State adjusted level of performance at any time prior to the end of the program year. If such a circumstance would affect a State's adjusted level of performance for a subsequent program year, a State should request the revision at least 60 days prior to the end of the current program year or as soon as it becomes aware of the effect of the unanticipated circumstance.

B.44 What procedures should the State follow when submitting a request to the Secretary to revise one or more agreed-upon State adjusted levels of performance for its core indicators of performance?

A State seeking to revise a State adjusted level of performance must submit the same form and follow the same procedures that it used in negotiating the performance levels at issue. Thus, a State must submit a revised Final Agreed Upon Performance Levels Form (FAUPL), as required by the Perkins IV Guide for the Submission of State Plans (OMB Control No. 1830-0029), on which the State would include its proposed revised level of performance and the information that supports its request for a revision in lieu of the baseline data that the State originally submitted, for example:

- A description of the nature of the problem or unanticipated circumstance, including a description of when the unanticipated circumstance occurred and its duration or expected duration.
- How the unanticipated circumstance would affect the particular indicator of performance for which the State is requesting a revised adjusted level of performance.

- The proposed revised State adjusted level of performance and program year or years affected by the request.
- Evidence of the change in the factors described in section 113(b)(3)(A)(vi) of Perkins IV that includes a forecast of the impact the unanticipated circumstance will have on the State adjusted level of performance.
- Description of the approach or approaches the State used to determine the revised level of performance.
- The State's computations for the proposed revised level of performance.

B.45 What actions will the Secretary take once a State has provided a proposed revised FAUPL with its proposed revised level of performance and any information or documentation to support its request?

The Secretary and the State will negotiate to reach agreement on whether an unanticipated circumstance would affect a level of performance taking into account the information provided in the State's request and the factors that the State considered at the time it negotiated its adjusted levels of performance, with the Secretary. A revised State adjusted level of performance would take effect on the date an agreement is reached between the Secretary and the State.

Special Conditions Pertaining to Missed Performance Levels

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

C.1 Will the Department issue a definition of “high-wage, high-skill, or high-demand” occupations?

No. Each State would be responsible for identifying “high-wage, high-skill, or high-demand occupations or professions” under the draft State plan guide. The U.S. Department of Labor, Bureau of Labor Statistics, offers a wealth of information and data to assist States in this effort. See <http://www.bls.gov/home.htm>

C.2 Will the Department issue a list of “nontraditional occupations or fields” that all States can use?

No. Each State would be responsible for identifying “nontraditional fields” under the draft State plan guide. The U.S. Department of Labor’s Bureau of Labor Statistics and Women’s Bureau, and the National Association of Partners in Education are several sources of information and data to assist states in this effort. See <http://www.bls.gov/home.htm>, <http://www.dol.gov/wb/factsheets/nontra2005.htm>, and <http://www.napequity.org>.

FISCAL CONSIDERATIONS

Split of Funds

D.1 How should a State determine its secondary/postsecondary split?

The Act does not establish criteria for determining a State’s split of funds between its secondary and postsecondary delivery systems. As such, a State has total flexibility in making this decision. Moreover, if a State chooses to establish a reserve fund under section 112(d) of the Act, the State has complete freedom to split these funds in any manner it chooses. Attention should be given to section 133(a) of the Act for further State flexibility if the split made under section 112(a)(1) results in the secondary or postsecondary portion of the State’s delivery system receiving 15% or less of available funding.

Alternative Postsecondary Formulas

D.2 What data sources, other than Pell Grants, can a State use to develop an alternative postsecondary formula?

The Department has considered past requests for alternative postsecondary formulas on a case-by-case basis. Based on the Department’s past experience with respect to alternative postsecondary distribution formulas, an alternative formula may include criteria relating to the number of individuals attending institutions within the State who—

- Receive need-based postsecondary financial aid provided from public funds;
- Are enrolled in postsecondary educational institutions that—
 - Are funded by the State;
 - Do not charge tuition; and
 - Serve only economically disadvantaged students;
- Are enrolled in programs serving economically disadvantaged adults;
- Are participants in programs assisted under WIA;
- Are Pell Grant recipients.

Moreover, in the past the Department has approved only an alternative postsecondary distribution formula proposed by the State that ---

- Included direct counts of students enrolled in the institutions;
- Directly related to the status of students as economically disadvantaged individuals;
- Applied uniformly applied to all eligible institutions;
- Did not include fund pools for specific types of institutions;
- Did not include direct assignment of funds to a particular institution on a non-formula basis; and
- Identified a more accurate count of economically disadvantaged individuals in the aggregate than does the statutory formula, which is now set forth in section 132(a)(2) of the Act.

Reserve Funds

D.3 What can section 112(c) reserve funds be used for?

As noted in section 112(c) of the Act, reserve funds can be expended for any of the activities noted in section 135 of the Act.

D.4 Can section 112(c) reserve funds be expended for new and emerging occupations? For innovative programs?

Under sections 135(b)(7), 135(c)(12), and 135(c)(20) of the Act, new and emerging occupations would be allowable uses of funds for the section 112(c)

reserve. Moreover, there appears to be no impediment for expending reserve funds for innovative programs that otherwise meet the requirements of the Act at the eligible recipient level.

D.5 Can section 112(c) reserve funds be expended for incentive grants?

Yes. A State may establish as a priority expending its section 112(c) reserve funds to provide incentive grants for eligible recipients. Those eligible recipients must, in turn, meet one of three categories under section 112(c) and must expend funds for the activities described in section 135.

Pooling of Funds

D.6 Must eligible recipients be in a consortium to pool funds locally?

While section 135(c)(19) of the Act permits eligible recipients to pool resources for innovative initiatives, the Act offers no specific guidelines for accomplishing the pooling process. States that encourage such local pooling should develop appropriate policies and procedures to accommodate this process. This could be done through a consortium arrangement, a locally established cooperative agreement, or through a memorandum of understanding. The State needs to be aware of how such pooled funds will be expended, who will serve as the fiscal agent for such funds, how such funds will be accounted for within the State and local accounting systems, etc.

D.7 Under section 135(c)(19) does the State pool funds or do eligible recipients pool funds?

Under section 135(c)(19) of the Act, eligible recipients have the ability to pool funds, not the State. However, each State may want to consider whether it should establish a process for the pooling of funds by eligible recipients.

Uses of Consortia Funding

D.8 Can consortia formed under sections 131 and 132 restrict funds to small entities?

Sections 131(f) and 132(a)(3) of the Act establish the requirements for the use of funds within consortia. At a minimum, the use of consortium funds must be used only for purposes and programs that are mutually beneficial to all members of the consortium. This presupposes joint planning by the consortium members resulting in programs that are of sufficient size, scope, and quality to be effective. Moreover, a consortium is precluded from allocating resources to members in amounts equal to their original allocations or for purposes and programs that are not mutually beneficial.

D.9 Under Title II of Perkins IV, can labor organizations be part of a tech prep consortium?

Yes. Under section 203(a)(1) of the Act, a tech prep consortium must consist of at least one secondary entity, as defined, and one postsecondary institution, as defined. Section 203(a)(2) of the Act notes that, in addition to the required participants, a tech prep consortium may also include institutions of higher education that award a baccalaureate degree and employers, business intermediaries, or labor organizations.

Local Uses of Funds

D.10 To what extent can Perkins IV funds be expended for “all school reforms,” such as encouraging Advance Placement (AP) courses for all students?

Funds under the Act must be expended only for career and technical education programs, services, and activities, as defined by the Act.

D.11 Does an eligible recipient have to expend funds for all nine required elements of section 124(b)?

An eligible agency (the “State”) expends section 124 funds of the Act, not an eligible recipient. The eligible agency is required to make expenditures for all nine required elements noted in section 124(b) of the Act.

Section 135(b)(1)-(9) of the Act lists nine elements that a local program must include to be eligible for funding under the Act, but not necessarily funded from funds awarded under the Act. Requiring Perkins funds to be used on all nine factors not only would dissipate limited grant funds beyond meaningful levels, but would also reduce the flexibility of eligible recipients to effectively address issues directly related to meeting required performance levels. It is the State’s responsibility to administer its Perkins grant award to ensure that sufficient funding is directed to the nine areas listed in section 135(b) of the Act, and that these areas will be the primary focus of programs funded by the eligible agency from its Perkins grant.

D.12 What funds can be used to support occupational and employment information?

State leadership funds can be expended for the support of occupational and employment information, as noted in section 124(c)(17) of the Act. Moreover, eligible recipients may expend resources under section 135(c)(2) of the Act which references section 118 of the Act, as well as section 135(c)(20) of the Act that notes that funds may be used to support other career and technical education activities that are consistent with the purpose of the Act.

Minimum Allocations

- D.13 Under what circumstances can a State waive the \$15,000 minimum allocation for a secondary eligible recipient?

Section 131(c)(2) of the Act sets forth a two-tier requirement for waiving the \$15,000 minimum funding allocation. The waiver applies to local educational agencies located in a rural, sparsely populated area, or to a public charter school (treated as a local educational agency for funding purposes) operating secondary school career and technical education programs. Both of these entities must demonstrate an inability to enter into a consortium for purposes of providing activities under this part of the Act.

Maintenance of Effort and Hold Harmless

- D.14 What is the difference, if any, between “maintenance of effort” and “hold harmless levels.”

Section 311(b) of the Act addresses the requirements for maintenance of fiscal effort that must occur from one year to the next for each State. The base requirement is that the State’s expenditures, per student or in the aggregate, from State sources for career and technical education programs for the preceding year equaled or exceeded such expenditures from State sources in the second preceding year.

Section 323(a) of the Act addresses a different level-of-effort requirement related to the level of non-Federal funds used to match Federal funds used for State administration. This effort level for State administration is often called a “hold harmless” level to distinguish it from the larger effort requirement found in section 311(b) of the Act. Section 323(a) of the Act requires a State to expend as much money from non-Federal sources for State administration as it did during the preceding year. These State funds used for administration are also part of the overall maintenance calculation used to determine whether a State has met its obligations under section 311(b) of the Act.

Small State Set-Asides

- D.15 What options are available for a small State that chooses to make more than 5 percent available for State administration consistent with section 112(a)(3) of Perkins IV?

Section 112(a)(3) of Perkins IV authorizes an eligible agency to make available for the administration of the State plan “an amount equal to not more than 5 percent, or \$250,000, whichever is greater” of the State’s allocation under section 111 of Perkins IV (Title I). Section 112(a)(2) of Perkins IV authorizes the eligible agency to make available for State leadership activities “not more than 10

percent” of the State’s allocation. Section 112(a)(1) requires the State to make available “not less than 85 percent” of the State allocation for distribution to eligible recipients under sections 131 and 132 of Perkins IV.

The \$250,000 maximum amount permitted for State administration exceeds 5 percent of some States’ Title I allocations. Those States may make available up to the full \$250,000 for State administration. The Department’s long-standing interpretation is that such a State has two options in this circumstance. The State may:

- Subtract the amount necessary to reach the \$250,000 permitted by section 112(a)(3) for State administration from funds made available for State leadership activities under section 112(a)(2); or
- Subtract the amount necessary to reach the \$250,000 permitted by section 112(a)(3) for State administration on a proportionate basis from funds made available for State leadership activities under section 112(a)(2) and from funds distributed to eligible recipients under section 112(a)(1).

EXAMPLE: A State receives a Title I allocation of \$4,000,000. Five percent of the allocation equals \$200,000, which is \$50,000 less than the maximum permissible amount that may be made available for State administration.

OPTION 1: The State subtracts \$50,000 from the funds made available for State leadership for use for State administration, resulting in the following within-State allocations:

Distribution to eligible recipients: not less than 85% of State allocation (85% of 4,000,000)	\$ 3,400,000
State leadership activities: not more than 10% of State allocation (10% of \$4,000,000) minus \$50,000	+ 350,000
State administration: up to 5% or \$250,000, whichever is greater (5% of \$4,000,000) plus \$50,000	+ 250,000
	\$4,000,000

OPTION 2: First, the State subtracts \$250,000 from the State's \$4,000,000 Title I allocation.

State allocation	\$ 4,000,000
State administration: up to 5% or \$250,000, whichever is greater	- 250,000
	\$ 3,750,000

Second, the State determines the amount that would have been made available for State leadership activities and distribution to eligible recipients in the absence of a shortfall in the amount available for State administration:

Distribution to eligible recipients: not less than 85% of State allocation (85% of 4,000,000)	\$ 3,400,000
State leadership activities: not more than 10% of State allocation (10% of \$4,000,000)	+ 400,000
	\$ 3,800,000

Third, the State converts each of these amounts into a percentage by dividing each amount by the sum of the amounts that would have been made available for each purpose in the absence of a shortfall in the amount available for State administration (\$3,800,000):

Distribution to eligible recipients $(\$3,400,000/\$3,800,000) \times \$3,750,000$	\$ 3,355,263
State leadership activities $(\$400,000/\$3,800,000) \times \$3,750,000$	+ 394,737
	\$ 3,750,000

Pooling of Funds

D.16 May secondary and postsecondary recipients pool funds?

Yes. Section 135(c)(19) of Perkins IV permits any eligible recipient to pool a portion of the funds it receives under section 131 or 132 of Perkins IV with a portion of the same funds available to one or more eligible recipients for innovative initiatives, but does not require that the eligible recipients all be secondary-level or postsecondary-level agencies or institutions. This provision permits eligible recipients to combine funds for initiatives that may include improving the initial preparation and professional development of career and technical education teachers, faculty, administrators, and counselors; establishing, enhancing, or supporting systems for accountability data collection or reporting data; implementing career and technical programs of study; or implementing technical assessments.

D.17 If eligible recipients pool funds, which eligible recipient is responsible for the funds?

Each eligible recipient is responsible for any funds that it pools under section 135(c)(19) of Perkins IV and would be subject to the same Federal requirements with respect to the pooled funds as apply to its other subgrant funds. For example, financial management standards in EDGAR at 34 CFR 80.20 require that a subgrantee, such as an eligible recipient under Perkins IV, maintain records that adequately identify the source and application of funds provided for financially assisted activities and accounting records supported by source documentation, such as cancelled checks, paid bills, payrolls, time and attendance records, and contract and subgrant documents. See 34 CFR 80.20(b)(2) and (6), respectively. The Department strongly encourages the recipients that decide to pool funds to develop a written agreement that determines the amount of funds, the use of all pooled funds, and the accounting system that will be used to permit the identification of the costs paid for with the pooled funds.

Funding for Remedial Education

D.18 What is a remedial course?

Perkins IV does not define the term “remedial course,” as it is used in the definition of “career and technical education.” However, the Department would consider a course to be “remedial” if it were designed to provide instruction in reading, writing, and mathematics for students who have not acquired the basic academic skills necessary to succeed in general or in career and technical education courses.

D.19 May a State or an eligible recipient use Perkins funds for remedial classes?

No. The definition of “career and technical education” in section 3(5) of Perkins IV precludes the use of any Perkins IV funds for remedial classes.

Any course funded under Perkins IV must meet all parts of the definition of “career and technical education,” including that the course provide “coherent and rigorous content aligned with challenging academic standards” and “technical skill proficiency,” as required by section 3(5)(A)(i) and (ii) of Perkins IV, respectively. A remedial course would not meet the requirements to provide “rigorous content” or “technical skill proficiency.”

Further, the definition of “career and technical education” in section 3(5) of Perkins IV specifically excludes prerequisite courses that are remedial. Section 3(5)(A)(iii) of Perkins IV defines “career and technical education” in part as “organized educational activities that offer a sequence of courses that may include prerequisite courses (other than a remedial course).”

D.20 May a State or an eligible recipient use Perkins funds for remedial services that are part of a career and technical education class or program?

Yes. Section 135(c)(6) of Perkins IV allows eligible recipients to use funds “for mentoring and support services.” Section 3(31) of Perkins IV defines “support services” to mean services related to curriculum modification, equipment modification, classroom modification, supportive personnel, and instructional aids and devices. Thus, a State or an eligible recipient could not use Perkins IV funds to provide remedial “courses” but could fund “services” related to career and technical education programs in which students are enrolled even if these services such as tutoring provided by supportive personnel were remedial.

D.21 What other limitations does Perkins IV impose on a State’s or an eligible recipient’s use of Perkins funding for remedial services?

A State or an eligible recipient must use funds made available under Perkins IV for career and technical education activities that supplement, and not supplant, non-Federal funds expended to carry out career and technical education activities and tech prep program activities, as required by section 311(a) of Perkins IV. See also Question D.22 below.

Supplanting Prohibition

D.22 When would supplanting occur?

A presumption would arise that supplanting has occurred if a State or an eligible recipient used Perkins IV funds to provide services that the State or an eligible recipient (1) was required to make available under other Federal, State or local

laws, except as permitted by section 324(c) of Perkins IV; (2) provided with non-Federal funds in the prior year; or (3) provided with non-Federal funds for non-career and technical education students but charged to Perkins IV funds for career and technical education students.

These presumptions are rebuttable if the State or eligible recipient can demonstrate that it would not have provided the services in question with non-Federal funds had the Perkins IV funds not been available.

Section 324(c) of Perkins IV provides that, notwithstanding the above requirements, a State or an eligible recipient may use funds available under Perkins IV to pay for the costs of career and technical education services required in an individualized education program (IEP) developed pursuant to section 614(d) of the Individuals with Disabilities Education Act (IDEA) and services necessary to meet the requirements of section 504 of the Rehabilitation Act of 1973 with respect to ensuring equal access to career and technical education.

Funding for Preparatory Services for Tech Prep Students

D.23 May a consortium use Perkins IV Title II Tech Prep funds for preparatory services?

Yes. Section 203(c)(7) of Perkins IV requires each tech prep program to provide for preparatory services that assist participants in tech prep programs. Therefore, Title II tech prep funds may be used for this purpose.

D.24 What is the definition of preparatory services?

The Department's long-standing interpretation is that the term "preparatory services" means services, programs, or activities designed to assist individuals who are not enrolled in career and technical education programs in the selection of, or preparation for participation in, an appropriate career and technical education training program. Preparatory services may include, but are not limited to (1) services, programs, or activities related to outreach to, or recruitment of, potential career and technical education students; (2) career counseling and personal counseling; (3) career and technical education assessment and testing; and (4) other appropriate services, programs, or activities. See 34 CFR 400.4(b), originally implementing the Carl D. Perkins Vocational and Applied Technology Education Act (Perkins II).

D.25 To which student populations must a consortium provide preparatory services?

It is the Department's long-standing position that Congress intended a consortium to provide preparatory services to all student populations. See 34 CFR 400.4(b) and 406.3(b)(6), originally implementing Perkins II, and Appendix A—Analysis of Comments and Changes at 57 FR 36722-36723, 36851 (August 14, 1992).

Funding for Career and Technical Student Organizations

- D.26 May Perkins IV funds be used to support student transportation to, and lodging and meals at, technical skill competitions as part of national career and technical student organization (CTSO) conventions?

No, except in certain limited circumstances as described in the last paragraph of this answer. The Department's long-standing interpretation regarding the types of CTSO costs that may be paid from Federal grant funds is that Perkins funds used for the support of CTSOs may not be used for lodging, feeding, conveying, or furnishing transportation to conventions or other forms of social assemblage. See 34 CFR 403.71(c)(3), originally implementing Perkins II.

Perkins funds may be used for these types of direct assistance if the costs are (1) related to a CTSO that is an integral part of the curriculum, and (2) part of a larger program to serve special populations or nontraditional students, as discussed below. See Appendix A—Analysis of Comments and Changes at 57 FR 36825-36826 (August 14, 1992). For example, in these limited circumstances as discussed further below, an eligible recipient could use Perkins IV funds for transportation to, and lodging and meals at, a technical skills competition at a national CTSO convention for students were are members of special populations.

Funding for Direct Assistance to Students

- D.27 May a State or an eligible recipient use Perkins IV funds to provide direct assistance to students?

It is the long-standing interpretation of the Department that Congress intended to give States and eligible recipients the flexibility to use Perkins funds to provide direct assistance to special populations under certain, limited circumstances. A State or an eligible recipient, as appropriate, may use Perkins IV funds to provide direct assistance, including dependent care, tuition, transportation, books, and supplies, to individuals, if the following conditions are met:

- Recipients of the assistance are individuals who are members of special populations who are participating in career and technical education activities that are consistent with the goals and purposes of Perkins IV.
- Assistance is provided to an individual only to the extent that it is needed to address barriers to the individual's successful participation in career and technical education.
- Direct financial assistance to individuals is part of a broader, more general effort to address the needs of individuals who are members of special populations.
- Direct assistance is one element of a larger set of strategies designed to address the needs of special populations, including those preparing for non-

traditional fields. Direct assistance to individuals who are members of special populations does not, by itself, constitute a “program for special populations” that meets the requirements of section 124(b)(8) or 135(c)(4) of Perkins IV, nor does direct assistance to individuals preparing for non-traditional fields, by itself, constitute training and employment activities in non-traditional fields under section 124(b)(5) or 135(c)(17) of Perkins IV.

Funds must supplement, and not supplant, assistance that is otherwise available from non-Federal sources. See Question D.22 above. For example, generally, an LEA could not use Perkins IV funds to provide transportation to a special populations student if non-Federal funds previously were made available for this purpose, or if non-Federal funds are used to provide transportation for special populations students participating in non-career and technical education programs and these services otherwise would have been available to career and technical education students in the absence of Perkins IV funds.

In determining how much of the funds available under section 124 or 135 of Perkins IV may be used for direct assistance, a State or an eligible recipient should consider whether the costs of the specific services (both on an item-by-item basis and in the aggregate compared to the amount of the entire grant or subgrant) are a reasonable and necessary cost of providing programs for special populations. This Department also would expect the amount of a Perkins IV grant or subgrant used for direct assistance to be very limited. Thus, the Department does not envision a circumstance in which it would be a reasonable and necessary expenditure of available funds under section 124 or 135 of Perkins IV for a State or an eligible recipient to utilize a substantial portion of such funds to provide direct assistance to special populations. The bulk of the funds should be used for program costs rather than direct assistance to individual students.

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.

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.

E. INCENTIVES AND SANCTIONS

Note: This office answered question E.1 pertaining to Perkins IV incentives and sanctions in the January 9, 2007, non-regulatory guidance memo.

- E.1 What happens if a majority of the States doesn't meet the 90% threshold on the non-traditional measure? Would the Department consider eliminating this core indicator from sanctions?

Section 123(a)(1) of the Act requires a State to develop and implement a program improvement plan if it fails to meet at least 90 percent of an agreed upon State adjusted level of performance for any of the core indicators of performance in section 113(b) of the Act. This plan must be implemented in the first program year succeeding the program year for which the State failed to meet the State adjusted level of performance for any of the core indicators of performance. That said, section 123(a)(3) provides the Secretary with the authority to determine whether and to what extent to implement sanctions. Section 123(a)(4) authorizes the Secretary to use funds withheld from a State to provide technical assistance, to assist in the development of an improved State improvement plan, or for other improvement strategies consistent with the requirements of the Act for such State.

- E.2 Does a State have to develop a specific and separate program improvement plan for any special population that does not meet the State's adjusted performance level on any core indicator?

No. However, section 123(a)(1) of the Act requires a State to consider performance gaps identified under section 113(c)(2) of the Act in the development and implementation of its program improvement plan for any of the core indicators of performance for which the State failed to meet at least 90 percent of an agreed upon State-adjusted level of performance. Section 113(c)(2) of the Act requires each eligible agency to identify and quantify any disparities or gaps in performance between any category of students who are special population members or who are in the categories described in section 1111(h)(1)(C)(i) of the ESEA and compare it to the performance of all students in its annual report to the Department. Eligible recipients also must consider performance gaps identified under section 113(b)(4)(C)(ii)(II) of the Act in the development and implementation of a program improvement plan under section 123(b)(2) of the Act.

- E.3 Will a State be subject to sanctions for any special population category that does not meet the State-adjusted performance level on any core indicator?

No. However, if a State fails to meet at least 90 percent of its agreed upon performance level for any of its core indicators of performance for all students, then section 123(a)(1) of the Act requires a State to consider performance gaps identified under section 113(c)(2) of the Act in the development and

implementation of its program improvement plan for any of the core indicators of performance for which the State failed to meet at least 90 percent of an agreed upon State-adjusted level of performance.

F. TECH PREP PROGRAMS

Note: This office answered questions pertaining to Perkins IV tech prep programs (questions F.1-F.3) in the January 9, 2007, non-regulatory guidance memo.

- F.1 Will the Department issue information on the advantages and disadvantages to merging Title II tech prep and Title I basic grant funds?

The Department will issue non-regulatory guidance in the coming months which define the options for the consolidation of Title II tech prep funds with Title I basic grant funds, as permitted under section 202 of the Act, as well as the implications of consolidation for meeting other requirements, such as hold harmless levels and administrative match requirements. Each State must then determine whether such consolidation is beneficial in the implementation of its overall vision for career and technical education.

- F2. If a State consolidates its Title II tech prep funds into its Title I basic grant, does the State still need to form tech prep consortia?

Once Title II tech prep funds are consolidated with Title I basic grant funds, Title II funds are considered to be allotted under Title I, as provided in section 202(c) of the Act. Thus, there is no need for the State to form tech prep consortia if it consolidates all its Title II funds with its Title I basic grant funds. Only unconsolidated Title II tech prep funds must flow to consortia, as defined in section 203(a).

- F3. Who is responsible for checking to see that each local articulation agreement is in place?

Consortium applications required under section 204 of the Act should reflect the appropriate elements of a tech program as outlined in section 203(c) of the Act. As such, the State has the responsibility for ascertaining the degree to which local tech prep consortia have appropriate articulation agreements in place.

G. OCCUPATIONAL AND EMPLOYMENT INFORMATION

- G.1 Are States required to continue supporting activities under section 118, even though Congress did not appropriate funds for program year (PY) 2007-08?

No. However, the Act imposes on States and their eligible recipients certain required uses of funds (and allows other uses of funds) for activities pertaining to

the use of occupational and employment information under their new State plans under Title I and Title II of the Act, including:

Section 122(c)(2)(F) of the Act requires a State to describe how comprehensive professional development will be provided that assists CTE teachers, faculty, administrators, and career guidance and academic counselors to access and utilize data, including data provided under section 118 of the Act, student achievement data, and data from assessments.

Section 124(c)(17) of the Act permits a State to use its leadership funds to support occupational and employment information resources, such as those described in section 118 of the Act.

Section 135(c)(2) of the Act permits eligible recipients to provide career guidance and academic counseling, which may include information described in section 118 of the Act, for students participating in career and technical education programs that improves graduation rates and provides information on postsecondary and career options and provides assistance for postsecondary students.

Section 203(c)(4)(F) of the Act requires a State to include, as part of its tech prep programs, in-service professional development for teachers, faculty, and administrators that assists those individuals in accessing and utilizing data, information provided under section 118 of the Act, and information on student achievement, including assessments.

Section 204(d)(4) of the Act enables a State to give special consideration to tech prep consortium applications that provide education and training in an area or skill, including an emerging technology, in which there is a significant workforce shortage.

H. PARTICIPATION OF PRIVATE SCHOOL STUDENTS AND PERSONNEL

H.1 May an eligible recipient allow private school students to participate in its career and technical education programs and activities funded under Perkins IV?

Yes. Section 317(b)(1) of Perkins IV allows, but does not require, an eligible recipient, upon written request, to use its Perkins IV funds to provide for the meaningful participation of secondary students who reside in the geographical area served by the eligible recipient and who are enrolled in a nonprofit private school, except as prohibited by State or local law. An eligible recipient is not required to spend any specific amount of funds on services for private school students. However, the Department encourages recipients to provide services of reasonable scope and usefulness. An eligible recipient, as defined in section 3(14) of Perkins IV, includes, at the secondary level, an LEA (including a public charter

school that operates as an LEA), an area career and technical education school, an educational service agency, or a consortium eligible to receive assistance under section 131 of Perkins IV.

H.2 Which private school students are eligible for career and technical education services?

Secondary school students who reside within the eligible recipient's geographical area and who are enrolled in nonprofit private schools, whether or not the private school is located in the eligible recipient's geographical area, are eligible to participate in career and technical education services. For example, secondary school students who reside in Arlington County and attend a private school in the District of Columbia (DC) would be eligible for career and technical education services offered by Arlington County. A representative of the private school in DC would submit a written request to the Arlington County Public Schools (APS) to provide for the students' participation in APS' career and technical education programs and activities.

H.3 What obligation does an eligible recipient have with respect to consulting with private school officials?

An eligible recipient must consult, upon written request, in a timely and meaningful manner, with representatives of nonprofit private schools in the geographical area served by the eligible recipient, regarding the meaningful participation of eligible private school students in its career and technical education programs funded under Perkins IV. See section 317(b)(2) of Perkins IV. An eligible recipient also may consult with private school officials in geographic areas not served by the eligible recipient (e.g., a neighboring LEA), as students who are eligible for career and technical education services might attend those schools.

H.4 What is a State's or eligible recipient's responsibility with respect to allowing private school teachers and other school personnel to participate in its career and technical education in-service or professional development programs?

Section 317(a) of Perkins IV requires that a State or an eligible recipient that uses Perkins IV funds for in-service and preservice career and technical education professional development programs for career and technical education teachers, administrators, and other personnel, to the extent practicable, and upon written request, permit private school teachers, administrators, and personnel to participate in such programs. Section 317(a) applies only to those personnel in private schools that offer career and technical secondary education programs and that are located in the geographical area served by the State or the eligible recipient. Section 317(a) does not require the State or the eligible recipient to expend Perkins funds for separate programs and activities for private school personnel.

- H.5 Is there a deadline for private school representatives to submit a written request for consultation or services to the State or an eligible recipient?

Perkins IV does not establish a date or deadline for private school representatives to submit a written request for consultation or for services. Private school representatives are encouraged to contact the State or an eligible recipient as early as possible to allow ample time for the State or the eligible recipient to consider the request prior to planning its Perkins IV services and activities for the following school year. Private school representatives may want to contact the State or an eligible recipient to express their interest in career and technical education and obtain the information needed to make a written request for services or consultation. We encourage recipients to advise private school representatives to contact the LEA early so that the LEA may plan for services at the same time it is planning services for all students in the LEA.

- H.6 What information should private school representatives include in requests to the State or an eligible recipient?

Perkins IV does not establish any requirements for the content of written requests from private school representatives to the State or an eligible recipient for career and technical education services or consultation. The Department recommends that private school representatives first contact the State or an eligible recipient to ascertain what information the State or eligible recipient may require in a written request. The Department suggests that a written request include, at a minimum, a statement regarding the services or consultation requested, the numbers and types of personnel or students to be served, the geographical area in which the students reside, and the private school's address and contact information.

- H.7 What Perkins IV funds would the State or an eligible recipient use to fund programs and activities for private school personnel and students?

The State or an eligible recipient would use the same type of funds to provide programs and activities for private school personnel and students as it uses to provide the same services to public school students. A State, for example, would use its State leadership funds under section 124 of Perkins IV to provide the same training and professional development of private school career and technical education teachers, counselors, and administrators, as the State provides to public school career and technical education personnel. As a second example, an eligible recipient would use its funds under section 135 of Perkins IV to provide the same teacher training, in-service, and preservice activities for private school career and technical education personnel as the eligible recipient provides to its own public school career and technical education personnel.

I. ARTICULATION AGREEMENTS

- I.1 To which programs does the new definition of “articulation agreement” in Perkins IV apply?

The definition of “articulation agreement” that is set forth in section 3(4) of Perkins IV applies to all programs under Perkins IV whether the programs are authorized by Title I (basic State grant) or Title II (tech prep). Title II does not include any definitions applicable only to tech prep programs, as the definitions in section 202 of the Carl D. Perkins Vocational and Technical Education Act of 1998 (Perkins III), including the definition of “articulation agreement,” were removed by the Perkins IV amendments.

- I.2 Does the definition of the term “articulation agreement” under Perkins IV differ significantly from the Perkins III definition of this term?

Yes. The definition of the term “articulation agreement” in section 3(4) of Perkins IV is significantly different from the definition in section 202(a)(1) of Perkins III. The Perkins IV definition of “articulation agreement,” like the Perkins III definition, requires a written commitment to a program that is designed to provide students with a non-duplicative sequence of progressive achievement leading to technical skill proficiency, a credential, a certificate, or a degree. The Perkins IV definition further requires that this program be linked through credit transfer agreements between a secondary institution and a postsecondary educational institution, or a subbaccalaureate degree granting postsecondary educational institution and a baccalaureate degree granting postsecondary educational institution. See section 3(4) of Perkins IV. Further, the Perkins IV definition requires that an articulation agreement be (1) approved by the State or (2) approved annually by the lead administrators of a secondary institution and a postsecondary education institution, or a subbaccalaureate degree granting postsecondary education institution and a baccalaureate degree granting postsecondary education institution.

- I.3 Does Perkins IV require an articulation agreement for a tech prep program funded under Title II of the Act?

Yes. Section 203(c)(1) of Perkins IV requires that a tech prep program be carried out under an articulation agreement between the participants in the consortium. Further, section 203(c)(3)(B)(ii) of Perkins IV requires that each tech prep program include the development of tech prep activities for secondary education and postsecondary education that link secondary schools and 2-year postsecondary institutions, and if possible and practicable, 4-year institutions of higher education, through the use of articulation agreements. The definition of “articulation agreement” in section 3(4) of Perkins IV, as discussed above, applies to tech prep programs funded under Title II.

- I.4 May a tech prep program develop an articulation agreement with entities other than the educational agencies and institutions participating in the consortium?

Yes. Section 203(d)(3) of Perkins IV permits tech prep programs to establish articulation agreements with institutions of higher education, labor organizations, or businesses located inside or outside the State and served by the consortium, especially with regard to using distance learning and educational technology to provide for the delivery of services and programs.

- I.5 May a State and its subrecipients implement articulation agreements in programs funded under Title I of Perkins IV?

Yes. With its emphasis on programs of study, secondary and postsecondary linkages, and two-year and four-year postsecondary linkages, Title I requires or supports the use of articulation agreements in several ways. Section 122(c)(1)(C) of Perkins IV requires that the State's Plan include information that describes the career and technical education activities to be assisted that are designed to meet or exceed the State adjusted levels of performance, including a description of how the eligible agency will support eligible recipients in developing and implementing articulation agreements between secondary education and postsecondary education institutions. This provision, thus, requires a State to indicate how it will support articulation agreements for career and technical education programs in addition to those required for tech prep programs by Title II.

Additionally, section 124 of Perkins IV permits a State to use its State leadership funds for articulation agreements. Section 124(c)(2) authorizes the State to establish agreements, including articulation agreements between secondary schools and postsecondary institutions, in order to provide postsecondary education and training opportunities for students participating in career and technical education programs. Additionally, section 124(c)(3)(A) of Perkins IV authorizes the State's use of State leadership funds for Statewide articulation agreements for initiatives fostering student transition between subbaccalaureate programs and baccalaureate programs.

Further, section 135(c)(10)(A) of Perkins IV specifically permits eligible recipients to use funds awarded under Title I to develop initiatives, including articulation agreements, that facilitate the transition of students from subbaccalaureate programs to baccalaureate programs.

- I.6 Does Perkins IV require that a program of study be implemented through an articulation agreement, as defined in section 3(4) of Perkins IV?

No. Section 122(c)(1)(B) of Perkins IV does not require a State or its subrecipients to use an articulation agreement to implement the programs of study that the State must describe in its State Plan. However, the Department

encourages the State and its subrecipients to consider the use of articulation agreements, as defined in section 3(4) of Perkins IV, as a mechanism to strengthen programs of study.

- I.7 Must a program of study be implemented through a formal articulation agreement as set forth in section 3(4) of Perkins IV?

No. Section 122(c)(1)(B) of Perkins IV does not require a State or its subrecipients to use any type of agreement to implement its programs of study. However, a State and its subrecipients would likely find that some type of formal agreement that lays out the parameters for undertaking activities would greatly accelerate and improve the implementation of programs of study.

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. 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.

Applicable Federal Laws

- 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.

Transition Services

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.

Course Prerequisites and Requirements

- 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.¹ 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

¹ 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

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 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.

Accountability

- 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.

Curriculum Modifications

- 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).

Single Sex Programs

- 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.