




UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF CAREER, TECHNICAL, AND ADULT EDUCATION

THE ASSISTANT SECRETARY

AUG 05 2016

NON-REGULATORY GUIDANCE

TO: State Directors of Career and Technical Education

FROM: Johan E. Uvin, Deputy Assistant Secretary
Delegated the Duties of the Assistant Secretary 

SUBJECT: Questions and Answers Regarding the Implementation of the Carl D. Perkins Career and Technical Education Act of 2006 – Version 5.0

The Office of Career, Technical, and Adult Education (OCTAE) of the U.S. Department of Education (Department) issues this guidance to provide States with further information to implement the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins IV). Unless otherwise noted, all references to Title I in this document refer to Title I basic grant awards under Perkins IV. The information included in this guidance addresses questions submitted to our office by State career and technical education directors and their staffs since the fourth round of questions and answers (Q & As) was published on April 24, 2015. All of the questions in this guidance fall under section D, Fiscal Implications.

The Department has determined that this guidance is significant guidance under the Office of Management and Budget's, Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007). See www.whitehouse.gov/sites/default/files/omb/memoranda/fy2007/m07-07.pdf. Significant guidance is non-binding and does not create or impose new legal requirements. The Department is issuing this guidance to provide recipients and subrecipients of funds under Perkins IV with information to assist them in meeting their obligations under Perkins IV. If you are interested in commenting on this guidance, please email us your comment at OCTAE.Guidance@ed.gov or write to us at the following address: Office of Career, Technical, and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 11141, Potomac Center Plaza (PCP), Washington, DC 20202. For further information about the Department's guidance processes, please visit www2.ed.gov/policy/gen/guid/significant-guidance.html.

Enclosure

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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Funding for Academic Courses

D.58. May Perkins IV funds be used to pay for the costs of academic courses in secondary schools?

Yes, Federal Perkins IV funds may be used for academic courses in limited circumstances. In order to be an allowable Perkins IV expense, academic courses must be part of a career and technical education (CTE) program of study, consistent with Section 135 of Perkins IV.¹ Such allowable academic courses that are part of a CTE program of study might include Advanced Placement (AP) or International Baccalaureate (IB) courses, or “applied” academic classes, like Geometry in Construction or Applied Computer Science. However, even if academic courses are part of a CTE program of study, Perkins IV funds may *only* be used to supplement—and not supplant—non-Federal funds expended to carry out career and technical education activities. See Section 311(a) of Perkins IV. 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-CTE students but charged to Perkins IV funds for CTE students. For example, if a school used non-Perkins IV funds to cover the costs of an academic course that is part of a CTE program of study in the prior year, a presumption of supplanting may arise if the school used Perkins IV funds to cover those costs in the subsequent year. See Item D.22 in the Department’s *Questions and Answers Regarding the Carl D. Perkins Career and Technical Education Act of 2006, Version 3.0*, released on May 28, 2009,² for additional information on supplanting.

Program Income

D.59 What is program income?

Consistent with 2 CFR 200.80,³ program income means gross income earned by the recipient or subrecipient that is directly generated by a federally supported activity or earned as a result of the award during the grant period and can include, but is not limited to, income from fees for services performed. One example of a program that generates income is a school-based enterprise (SBE). An SBE is an entrepreneurial operation in a school setting that provides goods and services to meet the needs of the school. SBEs are

¹ Section 135(b)(1) of Perkins IV includes as a required local use of funds to support career and technical education programs that—“(1) strengthen the academic and career and technical skills of students participating in career and technical education programs, by strengthening the academic and career and technical education components of such programs through the integration of academics with career and technical education programs through a coherent sequence of courses, such as career and technical programs of study described in section 122(c)(1)(A), to ensure learning in—(A) the core academic subjects (as defined in section 9101 of the Elementary and Secondary Education Act of 1965); and (B) career and technical education subjects.”

² See https://s3.amazonaws.com/PCRN/uploads/Perkins_IV_Non-Regulatory_Guidance_QA_Version3.0.pdf

³ See

www.ecfr.gov/cgi-bin/text-idx?SID=10f34cdb5df1422174358acaaea3bfad&node=se2.1.200_180&rgn=div8

managed and operated by students as hands-on learning laboratories that integrate State- and locally-defined technical standards in the areas of marketing, finance, hospitality, or management, as well as employability skills such as problem-solving, communication, and teamwork.

D.60 May Perkins IV subrecipients earn program income?

Yes. In a February 5, 2016, program memorandum,⁴ the Department authorized Perkins IV eligible recipients and subrecipients to use program income under either the addition or cost-sharing options in 2 CFR 200.307(e) to:⁵

- Add program income to funds committed to the project by the Secretary and recipient, and use it to further eligible project or program objectives [addition option]; and/or
- Use program income to finance the non-Federal share of the project or program, as applicable [cost-sharing option].

If the addition option is used, eligible recipients and subrecipients must use program income available at the time an expenditure is made and must expend that income before drawing down Federal funds. See 2 CFR 200.305(b)(5).⁶

D. 61 Does earning program income impact the Perkins IV allocation subgrantees receive from the State under sections 131 and 132 of Perkins IV?

No. Perkins IV funds flow to local subrecipients by statutory formula under sections 131 and 132 of Perkins IV, and program income funds may not be deducted from those allocations without undermining the statutorily required formula. Accordingly, the Department authorized Perkins IV eligible recipients and subrecipients to use program income under either the addition or cost-sharing options in 2 CFR 200.307(e). See FAQ D.60 above.

⁴ See <http://cte.ed.gov/legislation/perkins-policy-guidance>

⁵ See http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=99ed40020cba558fa41286daa22e8506&mc=true&n=pt2.1.200&r=PART&ty=HTML#se2.1.200_1307

⁶ See http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=99ed40020cba558fa41286daa22e8506&mc=true&n=pt2.1.200&r=PART&ty=HTML#se2.1.200_1305

Funding for Methods of Administration

D. 62 What are State agencies' responsibilities under the Methods of Administration (MOA) program and may Perkins IV funds be used to pay for the costs of conducting the activities required under the MOA program?

A State agency's responsibilities under the Methods of Administration (MOA) program are set out in the 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), which can be found in 34 CFR part 100, Appendix B (Title VI regulations).⁷ Appendix B applies to a recipient of Federal financial assistance from the Department that offers or administers programs of vocational education or training. This includes State agency recipients under Perkins IV. The State agency responsible for the administration of vocational education programs under Perkins IV must adopt an MOA compliance program to prevent, identify and remedy discrimination on the basis of race, color, national origin, sex or disability by its subrecipients. (A "subrecipient," in the MOA context, includes a local educational agency, community college, or CTE center⁸ that receives Perkins IV funds through a State agency.⁹) This MOA program must include the following:

1. Collecting and analyzing civil rights related data and information that subrecipients compile for their own purposes or that are submitted to State and Federal officials under existing authorities.
2. Conducting periodic compliance reviews of selected subrecipients (i.e., an investigation of a subrecipient to determine whether it engages in unlawful discrimination in any aspect of its CTE program); upon finding unlawful discrimination, notifying the subrecipient of steps it must take to attain compliance and attempting to obtain voluntary compliance.
3. Providing technical assistance upon request to subrecipients. This includes assisting subrecipients with identifying unlawful discrimination and instructing them in remedies for and prevention of such discrimination.
4. Periodically reporting its activities and findings under the foregoing paragraphs, including findings of unlawful discrimination under paragraph 2, immediately above, to the Department's Office for Civil Rights.

Section 112(a)(3) of Perkins IV requires that "from the amount allotted to each State . . . for a fiscal year, the eligible agency shall make available (3) an amount equal to not more than 5 percent or \$250,000, whichever is greater, for administration of the State plan,

⁷ The Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex, and Handicap in Vocational Education Programs (Guidelines) were published after notice and comment in 1979 and are now included as Appendix B to 34 CFR part 104 and Appendix A to 34 CFR part 106.

⁸ Although the Guidelines use the term "vocational education," following the passage of Perkins IV, the term CTE is used in the place of "vocational education."

⁹ Guidelines at Section I.D.

which may be used for the costs of— . . . (D) assuring compliance with all applicable Federal laws.” Under section 112(a)(3)(D), a State agency may use Perkins IV State administration funds for the costs of conducting the above activities required under the MOA program. States should consider the costs and demands of administering the Perkins IV program when determining whether and how to use funds for administration of the State plan for the MOA program.

Finally, the Department issued a Dear Colleague Letter on June 15, 2016,¹⁰ to clarify the legal obligations for ensuring equal access to CTE programs, and providing examples of issues that may raise concerns regarding compliance with these obligations.

¹⁰ See <https://s3.amazonaws.com/PCRN/docs/colleague-201606-title-ix-gender-equity-cte.pdf>