



UNITED STATES DEPARTMENT OF EDUCATION

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TO: State Directors of Career and Technical Education

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

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

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

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

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

Enclosure

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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.

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

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A. STATE PLANS

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

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

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

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

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

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

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

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

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

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

B. ACCOUNTABILITY

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

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

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

C. DEFINITIONS

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

D. FISCAL CONSIDERATIONS

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

Monitoring

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

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

Maintenance of Effort

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A State must include in its MOE calculation all State expenditures³ that support activities that meet the definition of “CTE” in section 3(5) of Perkins IV, except for capital expenditures, special one-time project costs, and the cost of pilot programs. Section 311(b)(1)(B) of Perkins IV, 20 U.S.C. § 2391(b)(1)(B). A State must also exclude from its MOE calculation tuition and fees collected from students. 34 CFR § 76.534.

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

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

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

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

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

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

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

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

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

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

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

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

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

200, Subpart E, as regulations of the Department. See *Federal Awarding Agency Regulatory Implementation of Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards: Final Rule*, 79 FR 7586 (December 19, 2014). Under 2 CFR § 200.333(a), "[i]f any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken." The new regulations in 2 CFR Part 200 do not affect grant funds awarded prior to December 26, 2014, unless funds made available under those grants are carried forward into a new Federal fiscal year or a continuation grant. Furthermore, the Department has established a portal on ED.gov that provides guidance regarding 2 CFR Part 200 and will respond to questions received through that site regarding those regulations. See <http://www2.ed.gov/policy/fund/guid/uniform-guidance/index.html>.

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

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

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

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

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

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

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

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

- budget reflects a disproportionate impact on the State's CTE expenditures compared to other educational programs or other State budget categories; and
- Any relevant independent or scholarly studies detailing these exceptional or uncontrollable circumstances.

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

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

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

Example

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

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