

Issues Under Perkins V

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Agenda

1. Legal Authorities Governing Perkins/AEFLA
2. Perkins Violations
3. CLNA vs. Program Improvement Plans
4. Allowable Costs
5. Local Uses of Funds
 1. CTSOs, Program Income, Private Schools



What Legal Authorities Govern Perkins V?

- Perkins statute
- General Education Provisions Act
- Education Department General Administrative Regulations (EDGAR)/UGG



Does not include OCTAE Q+A, Dear
Colleague Letters, Emails, Non-Regulatory
issuances



Violations

The Most Frequently Cited Violations

1. Supplanting
2. Noncompliant Time and Effort Certifications (Paying Employees on Budget, not Effort)
3. Untimely Obligations/Linkage
4. Missing Documentation/Records
5. Serving Ineligible Participants
6. Unallowable Costs
7. Substandard P/T Monitoring

The Most Frequently Cited Violations (cont.)

8. Supporting Remedial Programs
9. Circumventing Procurement Competition Rules
10. Lack of Written Policies/Procedures

Supplanting

- Sec. 211 of Perkins
- Perkins, AEFLA/Sec. 241 of AEFLA funds must supplement non-federal funds
- Is there a law/policy requiring non-federal funds?
- Were non-federal funds used for that cost in the prior year?

To rebut unlawful supplanting:

1. Was there a reduction in non-federal support?
2. In the absence of the federal funds, would the activity/cost still be supported? (more difficult test)



Time and Effort

- Reliance on budgeted amounts to pay salaries
- Failure to have after the fact certifications
- Failure to include substitutes, part-time or stipends

Untimely Obligation

Definition of “obligate”...34 CFR 76.707

Type of Obligation	When Obligation Occurs
Acquisition of Property	Date of binding written commitment
Personal Services by Employee	When services are performed
Personal Services by Contractor	Date of binding written commitment
Travel	When travel is taken
Approved Pre-Agreement Cost	On the first day of the grant or subgrant performance period.

Sec. 135(a) of Perkins

- Each [college] that receives [Perkins] funds shall use such funds to develop, coordinate, implement, or improve CTE programs to meet the needs identified in the comprehensive needs assessment described in section 134(c).

The Interface Between the CLNA and Program Improvement Plan

Do colleges understand the CLNA requirement to revise local budgets in Year 3?

Sec. 134 (b)(9)

“If no meaningful progress has been achieved prior to the third program year, a description of the additional actions such recipient will take to eliminate these disparities or gaps.”



The third program year is 7/1/22

The background of the slide features a stack of several large, thick binders or folders with white pages, arranged in a slightly overlapping manner. A blue dashed line runs horizontally across the top of the image. A semi-transparent blue rectangular box is centered over the middle of the binders, containing the text "Allowable Costs" in white.

Allowable Costs

Selected Items of Cost

56 Selected Items of Cost

- Allowable
 - E.g., collection of improper payments (200.428); training and education costs (200.473)
- Allowable with special conditions
 - E.g., only as an indirect charge (leave payout, 200.431; advisory councils, 200.422); only with necessary documentation (compensation – personal services, 200.430)
- Allowable with prior approval
 - E.g., equipment and capital expenditures (200.438); entertainment (200.439); participant support costs (200.456)
- Unallowable
 - E.g., alcohol (200.423); bad debts (200.426)

Factors Affecting Allowability

2 CFR 200.403

- ✓ **Necessary** and **reasonable** for the performance of the federal award
- ✓ **Allocable** to the federal award
- ✓ **Consistent with policies and procedures** that apply uniformly to both federally-financed and other activities of the District
- ✓ Conforms to any limitations or exclusions set forth as cost principles in Part 200 or in the terms and conditions of the federal award
- ✓ Accorded consistent treatment as either a direct or indirect cost
- ✓ Adequately **documented**
- ✓ Determined in accordance with GAAP
- ✓ Not included as a match or cost-share, unless authorized by the federal program
- ✓ Net of applicable credits
- ✓ Incurred during the approved budget period



Sec. 135 – Perkins Local Uses of Funds



(a) GENERAL AUTHORITY.—Each eligible recipient that receives funds under this part shall use such funds to develop, coordinate, implement, or improve career and technical education programs to meet the needs identified in the comprehensive needs assessment described in section 134(c).

(b) REQUIREMENTS FOR USES OF FUNDS.—Funds made available to eligible recipients under this part shall be used to support career and technical education programs that are of sufficient size, scope, and quality to be effective, that –

(1) provide career exploration and career development activities through an organized, systematic framework designed to aid students, including in the middle grades, before enrolling and while participating in a career and technical education program, in making informed plans and decisions about future education and career opportunities and programs of study, which may include—

(A) introductory courses or activities focused on career exploration and career awareness, including non-traditional fields;



(b) REQUIREMENTS FOR USES OF FUNDS (cont.)

(B) readily available career and labor market information, including information on—

(i) occupational supply and demand;

(ii) educational requirements;

(iii) other information on careers aligned to State, local, or Tribal (as applicable) economic priorities; and

(iv) employment sectors;

(C) programs and activities related to the development of student graduation and career plans;

(D) career guidance and academic counselors that provide information on postsecondary education and career options; or

(E) any other activity that advances knowledge of career opportunities and assists students in making informed decisions about future education and employment goals, including **non-traditional fields**; or

(F) provide students with strong experience in, and comprehensive understanding of, all aspects of an industry;



(b) REQUIREMENTS FOR USES OF FUNDS (cont.)

(2) provide professional development for teachers, faculty, school leaders, administrators, specialized instructional support personnel, career guidance and academic counselors, or paraprofessionals, which may include—

(A) professional development on supporting individualized academic and career and technical education instructional approaches, including the integration of academic and career and technical education standards and curricula;

(B) professional development on ensuring labor market information is used to inform the programs, guidance, and advisement offered to students, including information provided under section 15(e)(2)(C) of the Wagner-Peyser Act (29 U.S.C. 491–2(e)(2)(C));

(C) providing teachers, faculty, school leaders, administrators, specialized instructional support personnel, career guidance and academic counselors, or paraprofessionals, as appropriate, with opportunities to advance knowledge, skills, and understanding of all aspects of an industry, including the latest workplace equipment, technologies, standards, and credentials;



(b) REQUIREMENTS FOR USES OF FUNDS (cont.)

(D) supporting school leaders and administrators in managing career and technical education programs in the schools, institutions, or local educational agencies of such school leaders or administrators;

(E) supporting the implementation of strategies to improve student achievement and close gaps in student participation and performance in career and technical education programs;

(F) providing teachers, faculty, specialized instructional support personnel, career guidance and academic counselors, principals, school leaders, or paraprofessionals, as appropriate, with opportunities to advance knowledge, skills, and understanding in pedagogical practices, including, to the extent the eligible recipient determines that such evidence is reasonably available, evidence-based pedagogical practices;

(G) training teachers, faculty, school leaders, administrators, specialized instructional support personnel, career guidance and academic counselors, or paraprofessionals, as appropriate, to provide appropriate accommodations for individuals with disabilities, and students with disabilities who are provided accommodations under the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.) or the Individuals with Disabilities Education Act;



(b) REQUIREMENTS FOR USES OF FUNDS (cont.)

(H) training teachers, faculty, specialized instructional support personnel, career guidance and academic counselors, and paraprofessionals in frameworks to effectively teach students, including a particular focus on students with disabilities and English learners, which may include universal design for learning, multi-tier systems of supports, and positive behavioral interventions and support; or

(I) training for the effective use of community spaces that provide access to tools, technology, and knowledge for learners and entrepreneurs, such as makerspaces or libraries;

(3) provide within career and technical education the skills necessary to pursue careers in high-skill, high-wage, or in-demand industry sectors or occupations;

(4) support integration of academic skills into career and technical education programs and programs of study to support—

(A) CTE participants at the secondary school level in meeting the challenging State academic standards adopted under section 1111(b)(1) of the Elementary and Secondary Education Act of 1965 by the State in which the eligible recipient is located; and

(B) CTE participants at the postsecondary level in achieving academic skills;



(b) REQUIREMENTS FOR USES OF FUNDS (cont.)

(5) plan and carry out elements that support the implementation of career and technical education programs and programs of study and that result in increasing student achievement of the local levels of performance established under section 113, which may include—

(A) a curriculum aligned with the requirements for a program of study;

(B) sustainable relationships among education, business and industry, and other community stakeholders, including industry or sector partnerships in the local area, where applicable, that are designed to facilitate the process of continuously updating and aligning programs of study with skills that are in demand in the State, regional, or local economy, and in collaboration with business outreach staff in one-stop centers, as defined in section 3 of the Workforce Innovation and Opportunity Act (29 U.S.C. 3102), and other appropriate organizations, including community-based and youth-serving organizations;

(C) where appropriate, expanding opportunities for CTE concentrators to participate in accelerated learning programs (as described in section 4104(b)(3)(A)(i)(IV) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7114(b)(3)(A)(i)(IV))), including dual or concurrent enrollment programs, early college high schools, and the development or implementation of articulation agreements as part of a career and technical education program of study;



(b) REQUIREMENTS FOR USES OF FUNDS (cont.)

(D) appropriate equipment, technology, and instructional materials (including support for library resources) aligned with business and industry needs, including machinery, testing equipment, tools, implements, hardware and software, and other new and emerging instructional materials;

(E) a continuum of work-based learning opportunities, including simulated work environments;

(F) industry-recognized certification examinations or other assessments leading toward a recognized postsecondary credential;

(G) efforts to recruit and retain career and technical education program teachers, faculty, school leaders, administrators, specialized instructional support personnel, career guidance and academic counselors, and paraprofessionals;

(H) where applicable, coordination with other education and workforce development programs and initiatives, including career pathways and sector partnerships developed under the Workforce Innovation and Opportunity Act (29 U.S.C. 3101 et seq.) and other Federal laws and initiatives that provide students with transition-related services, including the Individuals with Disabilities Education Act;



(b) REQUIREMENTS FOR USES OF FUNDS (cont.)

(I) expanding opportunities for students to participate in distance career and technical education and blended-learning programs;

(J) expanding opportunities for students to participate in competency-based education programs;

(K) improving career guidance and academic counseling programs that assist students in making informed academic and career and technical education decisions, including academic and financial aid counseling;

(L) supporting the integration of employability skills into career and technical education programs and programs of study, including through family and consumer science programs;

(M) supporting programs and activities that increase access, student engagement, and success in science, technology, engineering, and mathematics fields (including computer science and architecture) for students who are members of groups underrepresented in such subject fields;



(b) REQUIREMENTS FOR USES OF FUNDS (cont.)

(N) providing career and technical education, in a school or other educational setting, for adults or out-of-school youth to complete secondary school education or upgrade technical skills;

(O) supporting career and technical student organizations, including student preparation for and participation in technical skills competitions aligned with career and technical education program standards and curricula;

(P) making all forms of instructional content widely available, which may include use of open educational resources;

(Q) supporting the integration of arts and design skills, when appropriate, into career and technical education programs and programs of study;

(R) partnering with a qualified intermediary to improve training, the development of public-private partnerships, systems development, capacity-building, and scalability of the delivery of high-quality career and technical education;



(b) REQUIREMENTS FOR USES OF FUNDS (cont.)

(S) support to reduce or eliminate out-of-pocket expenses for **special populations** participating in career and technical education, including those participating in dual or concurrent enrollment programs or early college high school programs, and supporting the costs associated with fees, transportation, childcare, or mobility challenges for those **special populations**; or

(T) other activities to improve career and technical education programs; and

(6) develop and implement evaluations of the activities carried out with funds under this part, including evaluations necessary to complete the comprehensive needs assessment required under section 134(c) and the local report required under section 113(b)(4)(B).

(c) POOLING FUNDS.—An eligible recipient may pool a portion of funds received under this Act with a portion of funds received under this Act available to one or more eligible recipients to support implementation of programs of study through the activities described in subsection (b)(2).

(d) ADMINISTRATIVE COSTS.—Each eligible recipient receiving funds under this part shall not use more than 5 percent of such funds for costs associated with the administration of activities under this section.

Program Income

2 CFR 200.1; 200.307

Definition

- Gross income earned by the non-federal entity that is **directly generated by a supported activity or earned as a result of the federal award** during the period of performance except as provided in §200.307 paragraph (f). (emphasis added)

Examples

- Not an exhaustive list
 - Fees for services performed,
 - Fees for the use or rental of real or personal property acquired under federal awards,
 - Sale of commodities or items fabricated under a federal award,
 - License fees and royalties on patents and copyrights, and
 - Principal and interest on loans made with federal award funds

What is NOT Program Income?

- 200.1:
 - Rebates, credits, discounts, and interest earned on any of them (would be considered an applicable credit under 200.406).
 - Interest earned on advances of federal funds (see 200.305 on cash management).
- 200.307(c): Taxes, special assessments, levies, fines, and other such revenues raised by a non-federal entity.
- 200.307(d): Proceeds from the sale of real property, equipment, or supplies

Cost of Doing Business

- 200.307(b): If authorized by regulations or the award, costs incidental to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the federal award.
 - Prior approval

Considerations

- Renting Out Federally-Purchased Equipment: Cannot charge a fee that is less than private companies charge for equivalent services unless specifically authorized. (2 CFR § 200.313(c)(3))

Generating Income

- Underlying Activity Must be Allowable (200.403):
 - Necessary, Reasonable, Allocable
 - Conform with Federal, State, and Local Rules
 - Consistently Treated
 - Determined in Accordance with GAAP
 - NOT used to meet Cost Sharing or Match*
 - Net Applicable Credits under 200.406
 - Adequately Documented
- Prior Approval (200.407)

Use of Program Income: Addition

- With prior approval of the federal awarding agency:
 - May be added to the federal award by the federal agency and the non-federal entity.
 - Must be used for the purposes and under the conditions of the federal award.
- Default for IHEs and nonprofit research institutions

Addition Example

- Non-federal entity has \$100,000 available for obligation.
- Entity earns \$10,000 in program income
 - Must still expend \$10,000 before requesting reimbursement
 - Still has \$100,000 available for obligation
- Dependent on prior approval

Auditing Program Income (OMB Comp. Supp.)

- Identification – Review rules and inquire of management and review accounting
- Determination/Assessment – Test for proper determination and calculation
- Record – Verify all PI was properly recorded
- Use – Test to see if income was used properly

Private School Participation

Private School Personnel (Sec. 217(a))

- Recipients using Perkins funds “for in-service and pre-service” CTE PD programs for CTE teachers, administrators, and other personnel shall, **to the extent practicable, upon written request**, permit the participation in such programs of CTE secondary school teachers, administrators, and other personnel in nonprofit private schools offering career and technical secondary education programs located in the geographical area served by such eligible agency or eligible recipient.

Private School Students (Sec. 217(b))

- Except as prohibited by State or local law, a local eligible recipient may **upon written request**, use Perkins funds to provide for the “meaningful participation,” in CTE programs and activities, including programs of study, receiving federal Perkins funding, of secondary school students attending nonprofit private schools in areas served by the local eligible recipient.

Consultation

- A local eligible recipient shall consult, **upon written request**, in a **timely and meaningful manner** with representatives of nonprofit private schools in the areas served by the local eligible recipient regarding the meaningful participation, in CTE programs and activities, including programs of study, receiving federal Perkins funding, of secondary school students attending nonprofit private schools.

Auditing Perkins Program

2022 OMB Compliance Supplement

OMB Compliance Supplement Compliance Requirements

1. **Activities Allowed or Unallowed**
2. **Allowable Costs/Costs Principles**
3. **Cash Management**
4. **Eligibility**
5. **Equipment & Real Property Management**
6. **Matching, Level of Effort, Earmarking**
7. **Period of Performance**
8. **Procurement and Suspension & Debarment**
9. **Program Income**
10. **Reporting**
11. **Subrecipient Monitoring**
12. **Special Tests & Provisions**





Questions



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