

Common Concerns for Use of Perkins Funds

By W. Charles Wiseley, Ed.D.

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Introduction

This document is a summary of questions and common concerns found in Carl D. Perkins Career and Technical Education Act (Perkins or the Act) Local Applications that I have researched over the years and should be taken as the view of one staff member. The Education Department General Administrative Regulations (EDGAR) and the Office of Management and Budgets (OMB) circulars are the authority and must be interpreted locally. Auditor interpretations tend to be the final interpretation. This document is my effort to understand those regulations and provide guidance on those rules. It also includes concerns raised by colleges when considering uses of federal Perkins funds. The document focuses on three main areas of concern:

1. Gifts of Public Funds
2. Construction / Remodeling
3. Supplanting

Note: As used in this document and references, SEA is a State Educational Authority and LEA is a Local Educational Authority.

Gifts of Public Funds

Gifts of Public funds are never allowed. Public funds can not turn into the private property of an individual. This includes the restrictions against memorabilia, honoraria, etc.

- *Equipment* – Although colleges receive title to equipment purchased with federal funds – the federal government has specific rules that apply to its use and disposition. The federal government even wants money back if the fair market value exceeds the minimum amount for equipment sold (unless used for trade-in or upgrade of equipment used for activities approved under the Act). See the Equipment section for more specific rules on disposition.
- *Direct Assistance to students* - Even if students receive direct assistance using Perkins funds, the assistance cannot become the property of the student. For example, a program that provides books for economically disadvantaged students must include as part of the program the return of the books when they are no longer needed (at least an attempt to recover the books).
- *Memberships, subscriptions and professional activity costs* - Costs of institutional memberships and subscriptions are allowed; costs of individual memberships and subscriptions are not allowed. Memberships and subscriptions for the institution would be the property of the institution and would not transfer with a departing employee.
- *Consulting fees* – The Education Department generally requires that the consulting rate charged be reasonable and well documented in accordance with OMB Circulars. Consulting fees in excess of the federal guidelines are considered a gift of public funds.

Equipment

For the purposes of capitalization and depreciation, the state has increased the minimum dollar value specification for equipment to \$5,000 to match the Federal government standard (although

the local standard is based on district policy) (see http://www.cccco.edu/Portals/4/CFFP/Fiscal/Standards/gasb/advisory_01_01.pdf).

However, classification for tracking and tagging (or inventorying) equipment should follow the recommendations in the Chancellor's Office Budget and Accounting Manual. The criteria in the Budget and Accounting Manual are set up as a series of questions to classify items as either equipment or supplies. A detailed decision tree is provided, with examples, in Appendix E of the manual available at http://www.cccco.edu/Portals/4/CFFP/Fiscal/Standards/bam/appendix_e.pdf.

The standard questions to determine whether an item is a supply are provided below.

1. Does the item lose its original shape and appearance with use?
2. Is it consumable, with a normal service life of less than one year?
3. Is it easily broken, damaged or lost in normal use?
4. Is it usually more feasible to replace it with an entirely new unit than to repair it?
5. Is it an inexpensive item? Does the small unit cost make it inadvisable to inventory the item? See *Education Code* Section 81600.

If any of the answers to the questions above are "yes," then the item is a supply. See the Budget and Accounting Manual for the complete classification criteria.

Use and Disposition

Equipment, when not in use for original Career Technical Education (CTE) purchase purposes, can be used for non-CTE purposes. The rules for use and disposition are specified in the Education Department General Administrative Regulations (EDGAR) Section 74.34 (Equipment), and the Office of Management and Budgets (OMB) Circular A-110. When equipment is no longer needed for the original reason it was acquired and disposal is considered, three options can be considered.

1. Equipment can be sold at fair market value and those funds used to purchase newer equipment or the equipment can be used as a trade-in for the new equipment. The purchase must fit the requirements of the Act. (Allowable activities may also be funded with prior approval of the monitor).
2. Equipment no longer needed by the program for which it was acquired has rules of use that the federal government requires. The priority of use specified in the OMB circulars is as follows:
 - a. Activities sponsored by the Federal awarding agency which funded the original project; and then
 - b. Activities sponsored by other Federal awarding agencies.
 - c. During the time that equipment is used on the project or program for which it was acquired, the recipient shall make it available for use on other projects or programs if other use will not interfere with the work on the project or program for which the equipment was originally acquired.
3. Equipment no longer needed by the college must be disposed of under federal rules which are delineated in OMB Circular 110, Section 1.34, and EDGAR Sec. 74.34 (G).

The Chancellor's Office has not published a document specifically addressing disposition of equipment (at least I believe that is the case – disposition may be addressed in the Budget and Accounting Manual). Since colleges rarely dispose of equipment that has any value, we have not had a need to develop one. The only published document I know of outside of OMB addressing "Equipment Disposition" is the one published by the California Department of Education (CDE) which specifies that some fair market values criteria for refunding to the federal government apply (see <http://www.cde.ca.gov/perkins/EquipmentManagement00.rtf>).

Since the time that the CDE document was published, the state has increased the dollar value specification for equipment to \$5,000. **Therefore, if a piece of equipment has a value under \$5,000, there are no disposition criteria requirements and the item can be disposed of with no strings attached.** Items at or above the equipment dollar value must follow the criteria specified above.

Maintenance and repair costs of equipment

Based on staff research and discussion (11/4/02 VEST meeting), equipment maintenance and repair, for instructional equipment used in CTE programs, is an allowable expense as long as the expense meets guidelines for program improvement and continuation and is reasonable. Requests to use Perkins funds for equipment maintenance and repair will be handled on an individual basis.

Staff interpret the references below as allowing use of Perkins funds for equipment maintenance and repair under the equipment rules and "Program improvement" intent of the Act. Our interpretation limits the equipment to instructional equipment used in CTE programs.

OMB Circular A-122

27. Maintenance and repair costs. Costs incurred for necessary maintenance, repair, or upkeep of buildings and equipment (including Federal property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable. Costs incurred for improvements, which add to the permanent value of the buildings and equipment or appreciably prolong their intended life shall be treated as capital expenditures (see *paragraph 15*).

OMB Circular A-87

28. **Maintenance, operations, and repairs.** Unless prohibited by law, the cost of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, necessary maintenance, normal repairs and alterations, and the like are allowable to the extent that they: (1) keep property (including Federal property, unless otherwise provided for) in an efficient operating condition, (2) do not add to the permanent value of property or appreciably prolong its intended life, and (3) are not otherwise included in rental or other charges for space. Costs, which add to the permanent value of property or appreciably prolong its intended life shall be treated as capital expenditures (see sections 15 and 19).

Again, it was our interpretation that instructional equipment, as an appropriate use of Perkins funds, could also be maintained or repaired with Perkins funds and though the original instructional equipment may not have been purchased with Perkins funds.

Student Expenses

LEAs may provide support for a program by helping individual students who are members of special populations: Districts may use Perkins funds to provide direct assistance to students if all of the following conditions are met:

1. Recipients of the assistance must be individuals who are members of special populations who are participating in Career Technical Education programs.
2. Assistance may only be provided to the extent that is needed to address barriers to the individual's successful participation in Career Technical Education programs.
3. Direct financial assistance must be part of a broader, more generally focused effort to address the needs of individuals.
4. Funds must be used to supplement, not supplant.

Additional information on providing direct support to students may be found in *Guidelines for Using Perkins Funds for Direct Assistance To Special Populations Students* available at: http://www.jspac.org/repository/VTEA_Guidelines_for_Direct_Assistance_to_Special_Pops.pdf.

Memberships

Individual memberships and subscriptions are not allowable uses of Perkins funds. Only institutional memberships and subscriptions are allowable. The OMB circular for educational institutions (A-21) states in the "General provisions for selected items of cost" section:

28. *Memberships, subscriptions and professional activity costs.*
- a. Costs of the institution's membership in business, technical, and professional organizations are allowable.
 - b. Costs of the institution's subscriptions to business, professional, and technical periodicals are allowable.
 - c. Costs of meetings and conferences, when the primary purpose is the dissemination of technical information, are allowable. This includes costs of meals, transportation, rental of facilities, and other items incidental to such meetings or conferences.
 - d. Costs of membership in any civic or community organization are unallowable.
 - e. Costs of membership in any country club or social or dining club or organization are unallowable.

Although entertainment costs are not allowed, note that 28(c) is what allows meals at meetings or in travel during meal times.

Compensation of Consultants

The gift of public funds concept is included in the test of reasonableness with a maximum allowed. This section addresses three areas of concern: reasonableness, maximum, and employees of the institution as consultants.

Reasonableness

Simply stated the compensation must be reasonable for the service or expertise provided given the current market conditions.

Maximum Compensation

Most Federal granting agencies do not impose a specified maximum daily or hourly rate at which Federal grants may be charged for consulting costs but merely require that the consulting rate charged be reasonable and well documented in accordance with OMB Circular A-21. OMB Circular A-21 does not impose a specific limit on consulting costs. It merely requires such costs to be reasonable as follows:

32. Professional services costs.

a. Costs of professional and consulting services, including legal services rendered by the members of a particular profession who are not employees of the institution, are allowable, subject to subsection b and Section J.11 when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government. Retainer fees, to be allowable, must be reasonably supported by evidence of services rendered.

b. Factors to be considered in determining the allowability of costs in a particular case include (1) the past pattern of such costs, particularly in the years prior to the award of sponsored agreements; (2) the impact of sponsored agreements on the institution's total activity; (3) the nature and scope of managerial services expected of the institution's own organizations; and (4) whether the proportion of Federal Government work to the institution's total activity is such as to influence the institution in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under sponsored agreements.

The Education Department General Administrative Regulations (EDGAR) imposes no maximum consulting rate in general for Education grant programs:

Sec. 75.515 Use of consultants.

(a) Subject to Federal statutes and regulations, a grantee shall use its general policies and practices when it hires, uses, and pays a consultant as part of the project staff.

(b) The grantee may not use its grant to pay a consultant unless: (1) There is a need in the project for the services of that consultant; and (2) The grantee cannot meet that need by using an employee rather than a consultant.

However, there is an exception in the Education Department policies in Title 34 Part 385.46 of the Code of Federal Regulations (CFR) which ties the maximum daily consulting rate specifically for the Rehabilitation Training Programs to the Federal Executive Service Level 4 pay rate.

A similar reference to the current maximum daily rate for consultant compensation under NSF grants that limits 2009 consulting fees to \$600 per day, excluding indirect costs such as travel,

per diem, clerical services, fringe benefits, and supplies (<http://www.nsf.gov/pubs/2009/nsf09541/nsf09541.txt>). The fee rate maximum appears to be updated annually based on federal salary schedules. The limitation is based on Appropriation Act language that limits fees paid to consultants as:

2009 Appropriations Act

Unless specifically authorized by law, for fiscal year 2009 and thereafter, none of the funds provided under this title may be used to pay for the salaries of individual consultants at more than the daily equivalent of the rate paid for level IV of the Executive Schedule.

Compensation of Consultants who are Employees of Institutions of Higher Education

There are special rules for compensating employees of an institution for consulting work.

EDGAR Sec. 75.516 Compensation of consultants--employees of institutions of higher education.

If an institution of higher education receives a grant for research or for educational services, it may pay a consultant's fee to one of its employees only in unusual circumstances and only if: (a) The work performed by the consultant is in addition to his or her regular departmental load; and (b) (1) The consultation is across departmental lines; or (2) The consultation involves a separate or remote operation.

Construction / Remodeling

Activities such as construction and remodeling, which increase the value of an asset or appreciably extend its useful life, are not allowed with federal funds unless authorized by the Act. There is no provision in Perkins IV authorizing construction.

Facilities and Furniture references

Provisions in EDGAR provide the language that excludes facilities as an allowable use of funds in Part 76, subpart F, Section 76.533 Acquisition of real property; construction.

No State or subgrantee may use its grant or subgrant for acquisition of real property or for construction unless specifically permitted by the authorizing statute or implementing regulations for the program.

Perkins is silent on facilities and therefore facilities are not allowed.

EDGAR Part 74c Section 74.27 also refers us to OMB circular A-21 which specifies in J.16(B)(1) and (3) that facilities are an unallowable expenditure with these funds:

- (1) Capital expenditures for general purpose equipment, buildings, and land are unallowable as direct charges, except where approved in advance by the sponsoring agency.
- (3) Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as direct charges, except where approved in advance by the sponsoring agency.

The “sponsoring agency” as used in the OMB circular is the US Department of Education (USDE). These sections clearly exclude all general purpose equipment, buildings, and land including improvements that increase their value.

Supplanting in reference to facilities and furniture - The prohibition against Perkins funds being used for facilities and furniture can also be based on the Supplement/Not Supplant provision found in Section 311 of the Perkins Act.

SEC. 311. FISCAL REQUIREMENTS.

(a) SUPPLEMENT NOT SUPPLANT.—Funds made available under this Act for career and technical education activities shall supplement, and shall not supplant, non-Federal funds expended to carry out career and technical education activities and tech prep program activities.

Generally construction of a facility is a local responsibility as is the furnishing of the facility with furniture, operating equipment, etc. Therefore, to charge such costs to the Perkins grant would be a supplanting of a local responsibility.

Supplement not Supplant

Federal funds are meant to supplement educational activities or, in other words, increase the level of funds that would, in the absence of the Federal funds, be made available from non-Federal sources for the education of participating students.

Supplanting

In simple terms, supplanting is (1) using Perkins funds to replace other funds that previously supported an activity or (2) funding an activity for CTE areas while funding that same activity for non-CTE areas with state funds (e.g., upgrading computers across campus on a three year cycle but funding the CTE areas with only federal funds). Neither of these two cases meet the supplement definition.

There is one exception to the replacement of funds criteria that allows the replacement. That exception occurs when it is documented that the previously used funds were no longer available and there was no other recourse but elimination of the activity or project.

An auditor would still flag the switch in funding sources as supplanting but the documented disappearance of funds and inevitable activity/project/service elimination would make the funding allowable. Eliminating activities or services because Federal funds are available does not meet this criteria. The actual language, taken from the OMB Compliance Circular A-133 states:

2.2 Level of Effort - Supplement Not Supplant (SEAs/LEAs)

...

General – Including the Safe and Drug-Free Schools Governor’s program, an SEA and LEA may use program funds only to supplement and, to the extent practical, increase the level of funds that would, in the absence of the Federal funds, be made available from non-Federal

sources for the education of participating students. In no case may an LEA use Federal program funds to supplant funds from non-Federal sources...

In the following instances, it is presumed that supplanting has occurred:

- The SEA or LEA used Federal funds (except Bilingual) to provide services that the SEA or LEA was required to make available under other Federal, State or local laws.
- The SEA or LEA used Federal funds to provide services that the SEA or LEA provided with non-Federal funds in the prior year.
- The SEA or LEA used Title I, Part A or MEP funds to provide services for participating children that the SEA or LEA provided with non-Federal funds for nonparticipating children.

These presumptions are rebuttable if the SEA or LEA can demonstrate that it would not have provided the services in question with non-Federal funds had the Federal funds not been available.

The real question for the supplanting issue is: Can you document that prior to deciding to use Perkins funds, the previously used funds were no longer available and that there was no recourse to the elimination of the activity without the federal funds.

Recent Federal activity in this area suggests that increased scrutiny on the documentation is occurring. Auditors are looking for evidence that the elimination of an activity or service occurred because of the availability of these Federal funds. If any such evidence is found or even suggested, the supplanting is not rebuttable. Experts in this area suggest allowing the elimination to occur and be documented prior to using Federal funds to avoid the elimination of the activity or service. How this might occur in reality is another question.

General References

Education Department General Administrative Regulations (EDGAR)

<http://www.ed.gov/policy/fund/reg/edgarReg/edgar.html>

Office of Management and Budgets (OMB) Circulars

<http://www.whitehouse.gov/omb/circulars/index.html>