

## **ADMINISTRATIVE AND FISCAL QUESTIONS**

### ***GENERAL***

**AF1: Does the primary eligibility cost limitation (which replaces the 70% provision) and the “other eligibles” cost limitation (which replaces the 30% provision) apply to the total amount of grant funds awarded or actual expenditures?**

Only the 30% cost limitation still applies. With the 1999 Amendments, the eligibility requirements for hard-to-employ individuals and non-custodial parents were altered and the language referring to any mandatory minimum expenditure level of 70 percent was eliminated for these groups. Since the statute does specify that no more than 30 percent of grants funds may be spent on individuals served under the “other eligibles” category, the Employment and Training Administration interprets that to mean that all other expended funds allotted to or awarded to the grantee will be expended on individuals who meet the primary eligibility requirements.

In the past, with a the minimum expenditure level of 70 percent, if an operating entity spent up to 30% of its funds on individuals with characteristics associated with long-term welfare dependence, but was only able to spend 69 percent (or less) of the total funds on the hard-to-employ under the 70% category, it could be penalized with disallowed costs for failure to expend at least 70% of its funds on hard-to-employ individuals. Unfortunately, since such disallowed costs would have to be identified from otherwise allowable expenditures under the 30% category, this policy, enacted in the name of program compliance, appeared arbitrary and punitive. Therefore, although operating entities are not absolved of the underlying requirement that spending is to be targeted to the hardest-to-serve under the primary eligibility category, they will remain in compliance with the program expenditure requirements even if their expenditure ratio falls slightly below 70%, as long as their expenditure rate for other eligibles does not exceed 30% of the total grant funds allotted. Formula-funded operating entities that are concerned that their final expenditure rate may fall more than slightly below the 70% (less than 69%) level by the end of the grant period should immediately discuss their anticipated level and its acceptability with their state WtW contacts. In like manner, competitive grantees should contact their Grant Officers Technical Representative (GOTR). For more complete discussion on changes to the mandatory minimum expenditure level language, please refer to 20 CFR 645.211 and the Preamble to the Final Rule, 2690, p. 2703, (66 Fed. Reg. 2690 (Jan.11, 2001)). Finally, under 20 CFR 645.211, the calculation of the 30 percent maximum expenditure limitation (services to those eligible under the “other eligibles” provision found at 20 CFR 645.213), is applied against a base of the total amount of funds allotted or awarded to the WtW operating entity. This calculation is NOT made against a base of the total amount of funds expended by the operating entity. This calculation method applies to both formula and competitive grant awards. For additional information, please see Training and Employment Guidance Letter (TEGL) No. 4-00, located under Policy/Laws, Regulations and Directives

on the WtW website: <http://wtw.doleta.gov/linkpages/tegltein.asp>

**AF2: Does the 15% administrative cost limitation apply to the total amount of grant funds awarded or actual expenditures?**

Under 20 CFR 645.235 (a)(1) and (2), which limits the expenditure of WtW funds for administrative purposes to no more than 15 percent of the grant award, the base to which the administrative cost limitation is applied is the total amount of grant funds awarded. This calculation method applies to both formula and competitive grant awards. For additional information, please refer to the TEGL No. 4-00, located under Policy/Laws, Regulations and Directives on the WtW website: <http://wtw.doleta.gov/linkpages/tegltein.asp>

**AF3: What constitutes a valid obligation for purposes of satisfying ' 403(a)(5)(A)(iv)(II) of the Act and 29 CFR 97.3? Are the criteria for valid obligations satisfied by written interagency agreements between two entities within the State government? What sources of funds are available to a State for financing staff costs and similar costs which cannot be charged to WtW grants within the period of availability?**

DOL regulations at 29 CFR 97.3 define obligations as “the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.” ETA considers obligations by the State grantee which satisfy these criteria as meeting the statutory requirement.

This includes all awards by the State grantee to subrecipients in accordance with ' 403(a)(5)(A)(vi) of the Act (85% funds) and all other awards by the State grantee to third parties in the form of grants, subgrants, contracts, purchase orders, and similar written agreements requiring payment for expenditures made during the period WtW funds are available for expenditure.

Under the referenced definition, ETA considers third parties to include other units of State government if this is consistent with State law. Accordingly, a valid obligation may arise from an award to another unit of State government if the award instrument specifies the activities, products, and services to be provided by the other unit in exchange for grant funds received. The other unit may be at the same level of government, e.g., a department whose highest official has the same job title as the grantee department's highest official, or at a different level, e.g., a bureau within another department.

ETA does not consider the following actions to result in valid obligations: actions within the grantee department, e.g., a transfer or delegation of budget authority or authority to enter into agreements to another headquarters unit or local office of the grantee; or transactions between two entities of

government which purportedly transfer authority and responsibility from one to another and back again but whose real purpose is only to create an appearance of an award action without effecting any actual change of position between the entities.

**AF4: Why is profit not allowed for WtW competitive grants?**

WtW competitive grants present an opportunity for private "for-profit" entities to collaborate with non-profit organizations as well as public agencies to provide effective services for hard-to-employ welfare recipients. To a certain extent, competitive grant funds will subsidize the research and development activities of "for-profit" entities, enabling them to test experimental employment strategies at no cost to themselves. "For-profit" entities are welcome to use the knowledge and experience they gain in profit-making enterprises funded through other sources, but the Department of Labor feels it is reasonable to disallow the earning of profit on competitive grant funds.

**AF5: Are grantees required to operate using an indirect cost rate?**

No, an indirect cost rate is not required. Grantees should direct charge wherever possible. However, if a grantee has more than one funding source, including more than one grant from the same agency, it should request an indirect cost rate. For additional information and clarification of the rules governing indirect cost rates, contact Steve Garfinkel, Department of Labor, Office of Administrative Services and Management, Division of Cost Determination, at [garfinkle-stephen@dol.gov](mailto:garfinkle-stephen@dol.gov) or 202-693-4102.

**AF6: How are indirect costs allocated between administration and program costs?**

Because of the revised WtW administrative cost definition, many more WtW costs are considered to be for the direct provision of WtW activities and can be classified as a program cost; therefore, they can be directly charged to the program. That said, there remain circumstances for indirect cost charging, and where an indirect cost pool is maintained. When specific costs charged to an overhead or indirect cost pool can be identified directly as program costs, they may be charged as program costs. For additional information on the revised WtW administrative cost definition and what types of WtW activities are subject to the administrative cost limit, please refer to 20 CFR 645.235.

**AF7: A person is found eligible based on information provided by the TANF agency (e.g., at least 30 months receiving assistance or within 12 months will become ineligible for TANF), and WtW provides services. Thereafter, it is determined that the person was not eligible. Which agency, TANF or WtW, is liable for any disallowed costs?**

The WtW grantee is ultimately responsible for any disallowed costs associated with the WtW grant. It is

up to the grantee to establish procedures that will limit the liability when dealing with subcontractors and that comply with section 645.214 of the WtW Regulations.

**AF8: May WtW grantees enter into a fixed unit price (a.k.a. single unit price) contract with subrecipients for training or services?**

A grantee may enter into a fixed unit price contract or any other type of contract or agreement as long as the appropriate competitive procurement procedures are followed, and costs are properly reported on the appropriate line(s) of the Quarterly Financial Status Report. As feasible, grantees are encouraged to utilize performance-based contracting, which bases payment upon desired outcomes. Be advised that regarding charges to administrative costs, the regulatory definition at 20 CFR 645.235 has been revised especially with regard to subrecipients and vendors. Using a single unit price contract does not absolve the grantee from adherence to the WtW regulations at ' 645.230, and the respective OMB Cost Principle Circulars. The latter require in general that costs be allocated to a particular cost objective in accordance with the relative benefits received.

**AF9: May performance-based contracts be used in the WtW Program?**

Yes. Grantees (and subgrantees) may use performance-based contracting. Cost reimbursement contracts, fixed price agreements, and fixed unit price performance-based contracts are among the options available to the contracting entity. 20 CFR 645.230(a)(3) requires that contracts or vouchers for job placement services must include a provision to require "that at least one-half (2) of the payment occur after an eligible individual placed in the workforce has been in the workforce for six (6) months.@ This requirement under WtW would lend itself to performance-based contract methods. Generally, a performance-based contract is focused on specific, measurable outcomes upon which payment is based, e.g., placements, retentions. Essentially, under WtW, grantees determine the contracting method that best meets their needs in accordance with the grantee's procurement procedures.

For reporting purposes, WtW expenditures must be categorized as administrative, program or federal technology expenditures regardless of the contracting method(s) used. Relatedly, the definition of a WtW administrative cost has been revised. The WtW regulations characterize costs of administration as the allocable portion of necessary and allowable costs associated with those specific functions identified in paragraph (c)(1) of section 645.235 for the administration of the WtW Program and which are not the general management and administration of the WTW related to the direct provision of services to participants. Accordingly, at 20 CFR 645.235(d)(1), only that portion of the WtW grantee's costs that are associated with the performance of the administrative functions described in the list at 20 CFR 645.235(c)(1) and awards to subrecipients or vendors that are solely for the performance of these administrative functions are classified as administrative costs. All other costs are considered to be for the direct provision of WtW activities and are classified as program costs.

Audit requirements relating to performance-based contracts at the Federal level provide that governmental and non-profit contractors are covered by the Single Audit Act requirements (OMB circular A-133). Commercial organizations which are WtW subrecipients may choose to have an organization-wide audit or a program-specific financial and compliance audit when expenditures are above the threshold amount of \$300,000 specified in Circular A-133. Organizations other than the Federal government which provide funding for WtW activities may have audit requirements of their own.

**AF10: If in preparing its grant proposal, an applicant for a competitive grant gets commitments from various partners to provide certain activities/services and names those partners in its grant application, is it then necessary for the applicant to go through a procurement process to select the providers subsequent to grant award?**

ETA's selection of an applicant does not constitute a blanket endorsement of the listed partners/providers or the process by which they were selected. ETA in its evaluation and selection process assumes that the partners/providers listed in the applicant's submission were or will be selected in accordance with the applicable procurement rules and other requirements. Listing the names of partners/providers in its grant application does not relieve an applicant from compliance with these requirements.