

Off. of Voc. and Adult Education, Education

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whichever is greater—for necessary and reasonable State administrative costs.

(2) For grants awarded from funds appropriated for fiscal years prior to fiscal year 1991 (grants awarded before July 1, 1991), an SEA may determine what percent of its grant is necessary and reasonable for State administrative costs.

(b)(1) At least 95 percent of an eligible recipient's award from the SEA must be expended for adult education instructional activities.

(2) The remainder may be used for local administrative costs—noninstructional expenses, including planning, administration, evaluation, personnel development, and coordination—that are necessary and reasonable.

(3) If the administrative cost limits under paragraph (b)(2) of this section are insufficient for adequate planning, administration, evaluation, personnel development, and coordination of programs supported under the Act, the SEA shall negotiate with local grant recipients in order to determine an adequate level of funds to be used for noninstructional purposes.

(Authority: 20 U.S.C. 1203b and 1205(c))

§ 461.41 What are the cost-sharing requirements?

(a) The Federal share of expenditures made under a State plan for any of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico may not exceed—

(1) 90 percent of the costs of programs carried out with the fiscal year 1988 grant (a grant that is awarded on or after July 1, 1988 from funds appropriated in the fiscal year 1988 appropriation);

(2) 90 percent of the costs of programs carried out with the fiscal year 1989 (a grant that is awarded on or after July 1, 1989 from funds appropriated in the fiscal year 1989 appropriation);

(3) 85 percent of the costs of programs carried out with the fiscal year 1990 grant (a grant that is awarded on or after July 1, 1990 from funds appropriated in the fiscal year 1990 appropriation);

(4) 80 percent of the costs of programs carried out with the fiscal year 1991 grant (a grant that is awarded on or after July 1, 1991 from funds appro-

riated in the fiscal year 1991 appropriation); and

(5) 75 percent of the costs of programs carried out with the fiscal year 1992 grant (a grant that is awarded on or after July 1, 1992 from funds appropriated in the fiscal year 1992 appropriation) and from each grant thereafter.

(b) The Federal share for American Samoa, Guam, the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, Palau, and the Virgin Islands is 100 percent.

(c) The Secretary determines the non-Federal share of expenditures under the State plan by considering—

(1) Expenditures from State, local, and other non-Federal sources for programs, services, and activities of adult education, as defined in the Act, made by public or private entities that receive from the State Federal funds made available under the Act or State funds for adult education; and

(2) Expenditures made directly by the State for programs, services, and activities of adult education as defined in the Act.

(Authority: 20 U.S.C. 1209(a); 48 U.S.C. 1681)

§ 461.42 What is the maintenance of effort requirement?

(a) *Basic standard.* (1)(i) Except as provided in § 461.43, a State is eligible for a grant from appropriations for any fiscal year only if the Secretary determines that the State has expended for adult education from non-Federal sources during the second preceding fiscal year (or program year) an amount not less than the amount expended during the third preceding fiscal year (or program year).

(ii) The Secretary determines maintenance of effort on a per student expenditure basis or on a total expenditure basis.

(2) For purposes of determining maintenance of effort, the “second preceding fiscal year (or program year)” is the fiscal year (or program year) two years prior to the year of the grant for which the Secretary is determining the State's eligibility. The “third preceding fiscal year (or program year)” is the fiscal year (or program year) three years prior to the year of the grant for

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which the Secretary is determining the State's eligibility.

Example: Computation based on fiscal year. If a State chooses to use the fiscal year as the basis for its maintenance of effort computations, the Secretary determines whether a State is eligible for the fiscal year 1992 grant (a grant that is awarded on or after July 1, 1992 from funds appropriated in the fiscal year 1992 appropriation) by comparing expenditures from the second preceding fiscal year—fiscal year 1990 (October 1, 1989–September 30, 1990)—with expenditures from the third preceding fiscal year—fiscal year 1989 (October 1, 1988–September 30, 1989). If there has been no decrease in expenditures from fiscal year 1989 to fiscal year 1990, the State has maintained effort and is eligible for its fiscal year 1992 grant.

Computation based on program year. If a State chooses to use a program year running from July 1 to June 30 as the basis for its maintenance of effort computation, the Secretary determines whether a State is eligible for funds for the fiscal year 1992 grant by comparing expenditures from the second preceding program year—program year 1990 (July 1, 1989–June 30, 1990)—with expenditures from the third preceding program year—program year 1989 (July 1, 1988–June 30, 1989). If there has been no decrease in expenditures from program year 1989 to program year 1990, the State has maintained effort and is eligible for its fiscal year 1992 grant.

(b) *Expenditures to be considered.* In determining a State's compliance with the maintenance of effort requirement, the Secretary considers the expenditures described in § 461.41(c).

(Authority: 20 U.S.C. 1209(b))

§ 461.43 Under what circumstances may the Secretary waive the maintenance of effort requirement?

(a) The Secretary may waive, for one year only, the maintenance of effort requirement in § 461.42 if the Secretary determines that a waiver would be equitable due to exceptional or uncontrollable circumstances. These circumstances include, but are not limited to, the following:

- (1) A natural disaster.
- (2) An unforeseen and precipitous decline in financial resources.

(b) The Secretary does not consider a tax initiative or referendum to be an exceptional or uncontrollable circumstance.

(Authority: 20 U.S.C. 1209(b)(2))

§ 461.44 How does a State request a waiver of the maintenance of effort requirement?

An SEA seeking a waiver of the maintenance of effort requirement in § 461.42 shall—

- (a) Submit to the Secretary a request for a waiver; and
- (b) Include in the request—
 - (1) The reason for the request; and
 - (2) Any additional information the Secretary may require.

(Approved by the Office of Management and Budget under control number 1830-0501)

(Authority: 20 U.S.C. 1209(b)(2))

§ 461.45 How does the Secretary compute maintenance of effort in the event of a waiver?

If a State has been granted a waiver of the maintenance of effort requirement that allows it to receive a grant from appropriations for a fiscal year, the Secretary determines whether the State has met that requirement for the grant to be awarded for the year after the year of the waiver by comparing the amount spent for adult education from non-Federal sources in the second preceding fiscal year (or program year) with the amount spent in the fourth preceding fiscal year (or program year.)

Example: Because exceptional or uncontrollable circumstances prevented a State from maintaining effort in fiscal year 1990 (October 1, 1989–September 30, 1990) or in program year 1990 (July 1, 1989–June 30, 1990) at the level of fiscal year 1989 (October 1, 1988–September 30, 1989) or program year 1989 (July 1, 1988–June 30, 1989), respectively, the Secretary grants the State a waiver of the maintenance of effort requirement that permits the State to receive its fiscal year 1992 grant (a grant that is awarded on or after July 1, 1992 from funds appropriated in the fiscal year 1992 appropriation). In order to determine whether a State has met the maintenance of effort requirement and therefore is eligible to receive its fiscal year 1993 grant (the grant to be awarded for the year after the year of the waiver), the Secretary compares the State's expenditures from the second preceding fiscal year (or program year—fiscal year 1991 (October 1, 1990–September 30, 1991) or program year 1991 (July 1, 1990–June 30, 1991)—with expenditures from the fourth preceding fiscal year—fiscal year 1989 (October 1, 1988–September 30, 1989) or program year 1989 (July 1, 1988–June 30, 1989). If