Texas Workforce Commission
Fiscal Technical Assistance Questions and Answers

E-mail Fiscal.TA@twc.state.tx.us for questions.
Last Update: March 2004

Introduction

Purpose
The Fiscal Technical Assistance Questions and Answers compiles the questions and corresponding responses addressed through the Texas Workforce Commission's (TWC) Fiscal.TA@twc.state.tx.us e-mail account. It provides supplemental guidance to TWC staff, grantees, and subgrantees in their application of certain cost principles and administrative requirements applicable to funds administered by TWC. All responses are based on federal, state, and agency requirements, and have been coordinated among fiscal policy, fiscal technical assistance and other TWC staff as appropriate.

Organization
The guidance is organized into twenty-four sections in the Main Table of Contents. The Main Table of Contents includes hyperlinks to each section. When a user opens a particular section, a separate table of contents appears at the beginning of that section. Each item in the Section Table of Contents is linked to the respective question and response within that section. Users may return to the Main Table of Contents or e-mail Fiscal TA by clicking the respective links.

Use
All responses may not be appropriate in all circumstances. In determining whether a particular cost or policy is allowable, users should consider the specific circumstances surrounding that particular cost or policy in conjunction with this guidance, federal and state statutes, regulations, rules, and other requirements applicable to the cost and entity. Failure to mention a particular item of cost or policy does not imply that it is either allowable or unallowable. If no similar item is discussed, the general tests of allowability must be applied. If allowability is difficult to determine or cannot be determined, clarification may be requested from Fiscal-TA.

Fiscal-TA will periodically update this guidance with additional questions and answers. It may also modify or delete responses that are no longer applicable (i.e. as a result of changes in federal state, or agency requirements). Given this susceptibility to change, users should document any decisions based on this guidance by retaining a hard copy of the particular question and response on which a particular decision was based. The hard copy should include the *Last Update* date printed at the beginning of each section. In the event of conflict between the Fiscal Technical Assistance Questions and Answers and federal or state law, the provisions of federal or state law apply.

Acknowledgements
Fiscal TA acknowledges Contract Management, Program Policy, Legal and other TWC staff for their assistance in the development and review of these responses.

To Main Table of Contents

E-mail Fiscal.TA@twc.state.tx.us for questions
Last Update: March 2004

TABLE OF CONTENTS

A. Access To Records And Records Retention 3
B. Allocation, Deobligation And Reobligation 5
C. Budget 7
D. Cash Management 9
E. Child Care Funds Management 10
F. Closeout Requirements 13
G. Contract Provisions And Assurances 14
H. Cost Allocation 15
I. Cost Principles And Selected Items Of Cost 16
J. Financial Reporting Requirements 26
K. Fiscal Agent 29
L. Indirect Cost Rates 30
M. Individual Training Accounts 32
N. Insurance And Indemnification 33
O. Internal Control 35
P. Miscellaneous 36
Q. Personnel 37
R. Procurement Standards 39
S. Program Income 44
T. Property Standards 46
U. Single Audit And Audit Resolution 51
V. Supportive Services And Participant Payments 53
W. Travel 56
X. Twc Responsibilities 61

A. ACCESS TO RECORDS AND RECORDS RETENTION

A.1 Scanned Invoices
A.2 Prior Approval for Document Destruction

A.1 Scanned Invoices (11/22/2002)

Should original documentation for payable invoices be kept or can scanned documentation be retained in its place?

A.1 Response

According to 29 CFR 97.42, Retention and Access Requirements for Records, records must be retained for three years unless otherwise specified. This section applies to records of grantees or subgrantees. As stated in Sec. 97.42 (d), "Substitution of microfilm. Copies made by microfilming, photocopying, or similar methods may be substituted for the original records." The Uniform Grant Management Standards, Chapter III, Subpart C __.42 also uses the same language as stated in Sec. 97.42 (d). We interpret scanning to be a "similar method" that may be substituted for the original records.

Although the language above applies to grantees and subgrantees, grantees' and subgrantees' contracts must contain a provision requiring the retention of all required records for three years after final payments are made and all legal or other pending matters are closed (29 CFR 97.36). We would conclude that the retention of scanned documents (from the original documents) by the contractor is acceptable.

A.2 Prior Approval for Document Destruction (11/25/2003)

Is approval required from TWC for document destruction, provided the conditions in the FMGC are met?

A.2 Response

No, prior approval from TWC is not required for the destruction of documents; however, the Board and subcontractors must retain the documentation for the specified timeframe as noted in the Texas Workforce Financial Manual for Grants and Contracts (FMGC). The FMGC, Chapter 4.03 states: "The subrecipient must retain all records and supporting documents for a minimum of 3 years after the final audit report, unless any litigation or claim has been started before the expiration of the three-year period. Then records must

be maintained until the completion of the action and resolution of all issues, or until the end of the regular three-year period, whichever is later." The FMGC Chapter 4.03 further identifies the types of records subject to the records retention policy which would "include financial, statistical, property, participant, program reports, award documents, budgets, all attachments, and all modifications." In addition, FMGC 18.10 states the auditor must keep their work papers and reports for three years from the date of the audit report.

To Main Table of Contents

B. ALLOCATION, DEOBLIGATION AND REOBLIGATION

B.1 FY 2004 Alternative Funding for WIA Statewide Activities
B.2 Fiscal Year 2004 Employment Services

B.1 FY 2004 Alternative Funding for WIA Statewide Activities (1/20/2003)

Could you let me know why a Board would not receive FY 2004 Alternative Funding for WIA Statewide Activities under Option B and or footnote #4 on the Workforce Investment Act Allocations as released in WD Letter 03-03, Attachment 1 ("Fiscal Year 2004 Preliminary Planning Estimates for Workforce Funding Categories")?

B.1 Response

According to Section 800.63(h) of TWC Rules, Expenditure Level for Statewide Activity Funding, "Effective in WIA program year 2001, a Board shall demonstrate an 80 percent expenditure level or prior year WIA allocated funds in order to be eligible to receive statewide activity funding."

Under Option B, Board areas must achieve the 80 percent expenditure standard for PY2001 WIA allocated prior year funds, applied on a program-by-program basis. Based on the data that was used to calculate the planning estimates for Alternative Statewide Activities Funding under Option B, your Board did not meet the 80 percent expenditure standard.

B.2 Fiscal Year 2004 Employment Services (8/25/2003)

Please provide additional detail on the use of the FY 2004 ES allocation. Specifically:

- what is the true funding amount,
- what is TWC keeping for salaries & benefits,
- what is being passed through the board (different from previous years),
- is the small administration portion going away since we're receiving the full allocation (less salary/benefits),
- relation to what RAG is covering, etc.

B.2 Response

The ES allocation as submitted through WD Letter 25-03, Change 1 includes salaries but excludes fringe benefits (retirement, health insurance, FICA, and BRP). The Boards have

access to their entire ES allocation less salary amounts, which will be paid by the Texas Workforce Commission (TWC). It is up to the Boards to determine staffing levels, which will then determine the total amount of salaries needed for the fiscal year.

The remainder of the funds may be used for occupancy, overhead, supplies, technology, travel, capacity building, administration, and other items identified by the boards. There will be no additional planning grant contracted this year.

With TWC transitioning to the "Texas Model" beginning September 1, 2003, the ES and Veterans programs are going to be eliminated from the Resource Agreements. However, the Resource Agreements will be extended one month for Veterans since Veterans is not transitioning to the Boards until October 1.

To Main Table of Contents

C. BUDGET

C.1 Budget Shortfalls – Reclassification of Costs

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C.1 Budget Shortfalls – Reclassification of Costs (11/14/2003)

When a specific grant exceeds budget, is it allowable to either (1) reclassify specific program costs that are also allowed in another open grant to that grant, or (2) reclassify shared indirect costs to another open grant? Is it allowable when a certain grant reaches it's budgeted administrative costs, to no longer charge shared costs to the related fund, even though the grant is still "open". Instead other grants would pick up these expenses.

C.1 Response

Indirect and/or administrative costs benefiting more than one grant must be shared relative to the benefit each received from the expenditure [see Uniform Grant Management Standards (UGMS), II Attachment A, Section F (1)]. Such costs may not be reclassified to avoid a budget deficit if doing so would create costs disproportionate to the relative benefits received. Section F (3)(b) states, "Amounts not recoverable as indirect costs or administrative costs under one Federal or state award may not be shifted to another Federal or state award, unless specifically authorized by Federal or state legislation or regulation." However, when federal or state program eligibility requirements allow an individual to participate in more than one program, costs for that participant may be reclassified to another program under certain circumstances.

Specific direct costs related to a program participant that are also allowable in another program grant may be reclassified to that grant if the participant was eligible and enrolled in each program at the time the cost was incurred. This may also be true for indirect costs. If an indirect cost allocation is based on participants, and certain eligible participants are reclassified to another grant program, a portion of the costs would shift from one program to the alternate program. This assumes all the indirect costs allocated are allowable under both grants.

For example, if the allocation of a workforce center's occupancy costs is based on the number of participants in each program administered by the center, and certain eligible participants are reclassified to an alternate program grant, the percentage allocated to each would change, less costs would be allocated to one grant and more of the allocation would be charged to the alternate grant. Such a transaction must be well documented to demonstrate that all participants are actually eligible for and enrolled in the alternate

program at the time the costs are incurred and that the costs are allowable under both grants.

To Main Table of Contents

D. CASH MANAGEMENT

D.1 In Kind Employer Contributions for WIA Customized Training

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D.1 In Kind Employer Contributions for WIA Customized Training (6/25/2003)

Can an employer use "in-kind" contributions as opposed to cash to satisfy the required employer contribution for customized training costs?

D.1 Response

Certain "in-kind" contributions may be used to satisfy employer-matching requirements for WIA customized training. The Department of Labor rules found in 29 CFR 97.24(a) state, "A matching or cost sharing requirement may be satisfied by either or both of the following: (1) Allowable costs incurred by the grantee, subgrantee or a cost-type contractor under the assistance agreement . . .. (2) The value of third party in-kind contributions applicable to the period to which the cost sharing or matching requirements applies." Section 97.24(b) establishes the qualifications and exceptions for allowable matching and cost sharing funds.

To Main Table of Contents

E. CHILD CARE FUNDS MANAGEMENT

E.1 Child Care Administrative Costs
E.2 Calculation of 5% Carryover
E.3 Payments to Child Care Vendors

E.1 Child Care Administrative Costs (12/3/2002)

It appears that under WD Letter 37-02 all costs under a certificate program, which TWC calls the Child Care Delivery System, are operations costs. However, under 45 CFR 98.52, it states that accounting services performed by grantees or subgrantees, or under agreements with third parties, are administrative. The CFR also states that indirect costs and the costs of audits are administrative. Please provide clarification as to what costs are administrative or not?

E.1 Response

The Texas Workforce Commission requested and received a clarification letter from the Administration for Children and Families (ACF) regarding the following:

- Whether the contracts for direct delivery of child care services to eligible program participants through a certificate system are exempt from the 5 percent CCDF administrative limit; and
- Whether indirect costs, as determined by an indirect cost agreement or cost allocation plan, are considered an administrative activity and subject to the 5 percent administrative cost limit.

The ACF's response points attention to 45 CFR 98.52(a) of the CCDF Final Rules which provides a long list of administrative activities, which includes indirect costs subject to the five percent "cap." However, after further consideration of the preamble to the Final Rules, it was concluded, "All costs of determining eligibility, establishing and operating a certificate program and developing child care systems are now considered non-administrative costs and are not subject to the five percent 'cap'."

ACF goes on to say that, "this also exempts those administrative activities/costs listed in 45 CFR 98.52(a) from consideration as administrative costs subject to the five percent cap as long as those activities/costs are for one or more of those activities listed in the previous sentence (determining eligibility, establishing and operating a certificate program…not subject to the 5% 'cap'. All the sub-grantee services (in order to be

exempt from the 5% 'cap') should be directly or indirectly related to the non-administrative activities just mentioned."

Therefore, TWC concluded that all contractor services and costs associated with providing these direct services are considered as direct costs and not subject to the 5 percent limit. This includes the contractor's indirect costs to cover overhead expenses as related to providing these direct services. Therefore, the contractor's accounting services, human resource services, etc., that are directly or indirectly related to operating a certificate program would be considered non-administrative costs. In the event the Board provides any CCDF administrative services, those costs are subject to the 5 percent administration costs.

E.2 Calculation of 5% Carry Forward (6/4/2003)

Are initiative funds included in the calculation of the 5% that a Board whose Child Care Allocation is below $5,000,000 can carry forward? Are any other funds excluded?

E.2 Response

Local matching funds and Protective and Regulatory Services (PRS) funds are excluded from the calculation of unused child care funds that can be added to the next fiscal year's contract (Texas Administrative Code 800.73). Also excluded in this calculation are awards for one year that include the following:

- FSE&T child care allocation
- WtW Governor Reserve child care allocation

With these exclusions, unexpended child care funds that exceed 5%, for Boards with child care allocations below $5,000,000, (3% for Boards receiving allocation of $5,000,000 or more) may be deobligated.

E.3 Payments to Child Care Vendors (9/19/2003)

According to our CCMS provider there is a new process in the CCSD application which only allows one check to be cut to a vendor. This is making the contractor wait to release checks until both BAPA and any funds drawn from the Board are paid to the CCMS contractor. This causes a delay to the centers. The Board's provider asked if either more than one check can be cut to a vendor or can the total amount be paid with BAPA and the drawn funds being reconciled once they are received? Please advise.

E.3 Response

Recent changes to the application resulted in the combining of funding streams into one check per provider. Since adjustments will not be made to BAPA to include other block grant funding, it would not be possible to pay the total amount to a provider through BAPA. Due to this issue, TWC automation has temporarily disabled this change in this

Board's CCSD application. However, the Board's CCSD application will need to be updated as soon as a process is developed.

For the full amount to be available in one check per provider, the contractor would need to enter the claims into CCSD and upload into BAPA. The contractor would then run a contributor statement for non-BAPA funds. This will tell the contractor the exact amount that is needed in cash draw. The contractor must then immediately inform the Board of the amount of other funds (WIA, FSE&T, WtW, etc.) needed for cash draw. By requesting the amounts at about the same time (entering amount into BAPA, and the Board preparing the cash draw of other funds), the total amount for the one check (BAPA reimbursement & cash draw) would be available at the same time (3-5 days).

To Main Table of Contents

F. CLOSEOUT REQUIREMENTS

F.1 Refunds Received After Contract Closeout

F.1 Refunds Received After Contract Closeout (9/23/2003)

A Local Workforce Board, received a refund from its One-Stop contractor for unpaid accruals that were included in a closeout for a contract that ended August 31, 2002. The amount refunded totaled approximately $1,700 for FSE&T and $9,000 for TANF. Because of the relatively small amount of the refunds and the paperwork involved to revise the closeouts, can the Board credit the refunds to its current FSE&T and TANF contracts?

F.1 Response

The Board does not have to revise the closeouts or submit refunds to TWC. Since the TANF and FSE&T contract periods overlap by at least one month, the Board should FIFO expenditures from Fiscal Year (FY) 2003 to FY 2002 to replace the expenditures previously reported in FY 2002 that were not incurred. (FIFO means First-In First-Out and refers to the movement of the earliest FY 2003 allowable expenditures from FY 2003 to FY 2002 followed by the next earliest, and so on.) As a result, the available budget in FY 2003 will increase by the amount of expenditures FIFOed to FY 2002. It is important that the TANF cost category amounts reported in the FY 2002 closeout remain the same subsequent to the FIFO adjustment. Therefore, when preparing the adjustment, the Board should FIFO from the same cost category in FY 2003 that generated the refund in FY 2002.

If the nature of the funding source changes when FSE&T expenditures are adjusted from FY 2003 to FY 2002 (i.e. 100% federal, 50/50, etc.), the Board should submit a revised Expenditure Report for FY 2002.

To Main Table of Contents

E-mail Fiscal.TA@twc.state.tx.us for questions
Last Update: March 2004

G. CONTRACT PROVISIONS AND ASSURANCES

Currently no questions or responses.

To Main Table of Contents

H. COST ALLOCATION

H.1 Allocation of Equipment Purchases

H.1 Allocation of Equipment Purchases (3/13/2003)

How should the cost of equipment purchases be allocated among multiple programs?

H.1 Response

The equipment should be accounted for in a manner that is consistent with local accounting practices and applicable cost and accounting requirements for similar costs that are incurred in like circumstances. Specifically, "A cost may not be assigned to a federal or state award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the federal or state award as an indirect cost [UGMS, Part II, Attachment A, (C)(1)(f)]." Principles for classifying costs as either direct or indirect costs can be found at UGMS, Part II, Attachment A, (D)-(F). In general, however, federal and state cost principles allow that:

- the full cost of the equipment be charged as a direct cost to the final cost objectives with which it can be specifically identified;
- the equipment be depreciated over its useful life and recovered over time as either a direct or an indirect cost; or
- the cost of the equipment may be recovered over time through a use allowance that is charged as either a direct or indirect cost.

See UGMS, Part II, Attachment B, Item 20(b) for further discussion of these options. Note that the total cost of the equipment may not be charged to the indirect cost pool at the time the equipment is acquired [see UGMS, Part II, Attachment D, (C)(2)(b) and ASMB C-10, Illustrations 6-1 and 6-3]. If the equipment is depreciated, limitations and principles for the use of depreciation and use allowances apply [see UGMS, Part II, Attachment B, Item 16]. If the cost of the equipment is allocated among multiple partners, the partners may fund their allocable share of the cost through resource sharing as described in the Federal Register, Volume 66, Number 105, Thursday, May 31, 2001, Notices [pp. 29638-29646]. [Note: This response has been modified from the original issuance in order to provide greater clarification.]

To Main Table of Contents

E-mail Fiscal.TA@twc.state.tx.us for questions
Last Update: March 2004

I. COST PRINCIPLES AND SELECTED ITEMS OF COST

I.1 Work-Related Damage to Employee's Personally Owned Vehicle
I.2 Interest on Financed "Build Out" Costs
I.3 Insurance Deductibles
I.4 Food for Planning Meetings and Seminars
I.5 Participant Traffic Fines, Late Fees and Court Costs
I.6 Allocation of Administrative Dollars – Adult Literacy
I.7 Training Costs Incurred Prior to Eligibility Determination
I.8 Classification of Workstations for Board Staff Processing Child Care Payments
I.9 Payment of Outstanding Invoices
I.10 WIA Administrative Costs in the Workforce Centers
I.11 Chamber of Commerce Dues
I.12 Classification of Child Care Monitoring Costs
I.13 Background Checks Program Participants
I.14 Profit for Wagner Peyser

I.1 Work-Related Damage to Employee's Personally Owned Vehicle (11/12/2002)

An employee of the Board, who works in the IT department, used his personally owned vehicle (POV) (a truck) to move some computers under the direction of his supervisor. The computers were not securely tied or padded in the bed of the truck and scratched the pickup bed casing. The cost of the repairs to the truck is $187.70. The Board's insurance company would not pay the claim because they felt that the owner of the truck failed to exercise due diligence in preventing the damage. Can the Board pay for the repairs?

I.1 Response

Because of the minimal amount of the damage claim, the Board may reimburse the employee for the cost of repair to the personal vehicle.

The State Uniform Grant Management Standards (UGMS), Part II, Attachment B, Section 26(c), and OMB Circular A-87, Attachment B, Section 25(c), both provide that minor losses not covered by insurance, such as spoilage, breakage, and disappearance of small hand tools, which occur in the ordinary course of operations, are allowable. However, if such losses result in an aggregate loss of $1,000 or more within a twelve-month period, the grantee or subrecipient may be required to reimburse the grantor agency.

I.2 Interest on Financed "Build Out" Costs (1/15/2003)

We, a Local Workforce Development Board, are researching options concerning a building lease in about a year and a half. We anticipate build out costs to be large ($1MM to $1.8MM), so we are looking at possible financing alternatives, such as owner financed, etc. If we borrow money from a bank to cover some or all of the "build out" costs, would the interest be allowable?

I.2 Response

The Texas Workforce Commission's Financial Manual for Grants and Contracts, Chapter 6-Allowable Costs, Sections 6.04 (s) & (v) state the allowability of costs for rearrangement and alteration of facilities and rental costs. "Rental costs are allowable to the extent that the rates are reasonable in light of such factors as:

1. rental costs of comparable property, if any;
2. market conditions in the area;
3. alternatives available; and
4. the type, life expectancy, condition, and value of the property leased."

"Costs incurred for rearrangement and alteration of facilities are allowable provided the organization has obtained prior written approval from the Commission."

OMB Circular A-87, Attachment B, Section 26(b) states that "Financing costs (including interest) paid or incurred on or after the effective date of this Circular associated with the otherwise allowable costs of building acquisition, construction, or fabrication, reconstruction or remodeling completed on or after October 1, 1980 is allowable, subject to the conditions in (1)-(4)…

(1) The financing is provided (from other than tax or user fee sources) by a bona fide third party external to the governmental unit;
(2) The assets are used in support of Federal awards;
(3) Earnings on debt service reserve funds or interest earned on borrowed funds pending payment of the construction or acquisition costs are used to offset the current period's cost or the capitalized interest, as appropriate. Earnings subject to being reported to the Federal Internal Revenue Service under arbitrage requirements are excludable.
(4) Governmental units will negotiate the amount of allowable interest whenever cash payments (interest, depreciation, use allowances, and contributions) exceed the governmental unit's cash payments and other contributions attributable to that portion of real property used for Federal awards."

Therefore, a conclusion has been reached that interest would be an allowable cost under the condition that the building lease and "build out" costs have been approved in writing as an allowable cost by the Commission prior to the lease.

I.3 Insurance Deductibles (2/2/2003)

Our contractor has Director and Officer's liability insurance with a $10,000 deductible. If an employee were to file a lawsuit against our contractor, would the deductible amount be an allowed cost?

I.3 Response

The cost of an insurance policy required pursuant to a Federal award or other insurance in connection with the general conduct of activities is allowable per OMB Circular A-87, Attachment B, Section 25; OMB Circular A-122, Attachment B, Section 22; and the Financial Manual for Grants and Contracts (FMGC), Chapters 4 and 6. However, the deductible is not a cost of obtaining insurance.

The deductible is paid if the insured contractor is found liable. Pursuant to OMB Circular A-122, Attachment B, Section 10(f), "Costs incurred by the organization in connection with the defense of suits brought by its employees or ex-employees under section 2 of the Major Fraud Act of 1988 (Pub. L. 100-700), including the cost of all relief necessary to make such employee whole, where the organization was found liable or settled, are unallowable."

Therefore, if an employee were to file a lawsuit against the contractor and the contractor was found liable, the deductible would not be an allowable cost.

I.4 Food for Planning Meetings and Seminars (2/13/2003 and 8/27/2003)

Is food an allowable cost for planning meetings and seminars?

I.4 Response

Fiscal-TA has received several questions regarding the allowability of food for planning retreats and seminars, specifically those related to technical assistance provided to Boards in the area of Youth Programs, and seminars designed to disseminate information about services available to business. These questions were answered separately on 2/13/2003 and 8/27/2003, respectively. The following response applies to both.

The meeting or seminar, and its associated costs, must meet the criteria as stated in OMB Circular A-87, Section 30(c), be necessary and reasonable and not otherwise prohibited in order for such cost to be allowable. The Board must also ensure that such costs are adequately documented.

OMB Circular A-87, Section 30(c) states, "Costs of meetings and conferences where the primary purpose is the dissemination of technical information, including meals are allowable." However, the cost of food provided at meetings in which the primary purpose is to plan future meetings and seminars and not to disseminate technical information would not be allowable. Entertainment costs, including amusement, diversion, and social activities and any associated costs such as meals, lodging,

transportation, gratuities, etc. are generally not allowable under OMB Circular A-87, Section 18.

Additionally, as stated in OMB Circular A-87, costs must be allowable and thus meet the criteria of being "necessary and reasonable for proper and efficient performance and administration of Federal awards. A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the costs."

I.5 Participant Traffic Fines, Late Fees and Court Costs (3/4/2003)

Under WIA, what is the official position for paying participant expenses such as:

- traffic fines and court costs;
- late drop fees pertaining to training; and
- late fees for utilities, rent, and the like for an emergency support service?

I. 5 Response

Cost principles for governments, non-profit and for-profit entities contained in the Office of Management and Budget Circulars A-87 and A-122 and the Code of Federal Regulations, 48 CFR Chapter 1, Part 31, classify fines and penalties as disallowed costs. These citations basically state that fines and penalties resulting from violations of, or failure to comply with Federal, State, and local laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of an award or written instructions of the awarding agency. Under these rules, a violation of law resulting in traffic fines and court costs would not be allowable.

The Workforce Investment Act (WIA) Section 101A(46) defines supportive services as services such as transportation, child care, dependent care, housing, and needs-related payments, that are necessary to enable an individual to participate in activities authorized under WIA Title 1. Use of funds for WIA can also, of course, be used for allowable training activities. The comments and responses to the WIA Final Rules found in 20 CFR Part 652 state, "To ensure flexibility, the regulations afford local areas the discretion to provide supportive services as they deem appropriate with limitations only in the areas defined in the Act." The cost principles mentioned above limit expenditures to those that would be reasonably incurred by a prudent person under the circumstances and are necessary.

Therefore, expenditures for late drop fees to enable a participant to enroll in training, as well as housing costs, including late fees for utilities and rent, could be allowable if they are reasonable and necessary for an individual to participant in WIA activities. Each situation should be separately evaluated as to its necessity and reasonableness.

I.6 Allocation of Administrative Dollars – Adult Literacy (5/2/2003)

Since costs below the Board level, other than those of a workforce center operator, are considered program costs, should a Board allocate administrative dollars to the Adult Literacy project entities? *Note the Adult Literacy project is funded by an Incentive Grant used for WIA Title IIB activities.

I.6 Response

No, it is not necessary to allocate administrative dollars to the Adult Literacy project entities. The costs for entities that provide the actual training but that do not administer the award are classified as program costs.

For more information about WIA cost classification, see the "One Stop Comprehensive Financial Management Technical Assistance Guide" Chapter II-5. Use this link http://wdsc.doleta.gov/sga/pdf/FinalTAG_August_02.pdf.

I.7 Training Costs Incurred Prior to Eligibility Determination (6/12/2003)

Can WIA funds be used to pay for the training costs of a WIA eligible student who was enrolled at a proprietary school prior to being determined eligible for WIA services?

I.7 Response

No. In order to be an allowable cost under a federal or state award, a cost must be "necessary and reasonable for proper and efficient performance and administration of federal or state awards" [UGMS, Part II, Attachment A, (C)(1)(a)]. Reasonable costs are those that are incurred in accordance with federal, state, and other laws and regulations; and with the terms and conditions of the award [UGMS, Part II, Attachment A, (C)(2)(b)]. The training costs violate federal regulations and are therefore not a reasonable cost under the award.

Training costs of students that were enrolled in training prior to completing any intensive services are in violation of the WIA Regulations at 20 CFR 663.310, and may be questioned. "Training services may be made available to employed and unemployed adults and dislocated workers who have met the eligibility requirements for intensive services, have received at least one intensive service under § 663.240, and have been determined to be unable to obtain or retain employment through such services [20 CFR 663.310]...."

Additionally, a participant cannot receive training until the need for training has been identified and documented. "The case file must contain a determination of need for training services under § 663.310, as identified in the individual employment plan, comprehensive assessment, or through any other intensive service received [20 CFR 663.240(b)]."

I.8 Classification of Workstations for Board Staff Processing Child Care Payments (8/19/2003)

Would expenditures for cubicle workstations that will be used by Board staff to process childcare provider billings and payments as well as self-arranged childcare be considered administrative costs or program costs?

I.8 Response

The cost of the cubicle workstations would be an administrative cost. In accordance with 45 CFR 98.52(a)(3), administrative activities may include...."administrative services, including such services as accounting services, performed by grantees or subgrantees or under agreements with third parties." Billing and payment activities are accounting services that are administrative in nature. Since the cubicle workstations are being used for administrative activities by the Board, the cost of the cubicle workstations is administrative.

I.9 Payment of Outstanding Invoices (8/26/2003)

Can current (FY 2003) TANF funds be used to pay outstanding (unpaid and overdue) TDHS invoices for mainframe production and wide area network services that were performed between September 2000 and April 2001. The total amount of the invoices is $2,777, half of which should have been charged to Choices and half to ERA in 2001.

I.9 Response

Since the TANF contract periods overlap for the FY 2001 and FY 2002 grants, and the FY 2002 and FY 2003 grants, the Board should adjust its TANF expenditures from FY 2001 to FY 2002 and from FY 2002 to FY 2003 on a Last In First Out (LIFO) basis to make room for the TANF share of the outstanding invoices in the FY'01 grant. A LIFO basis means the last allowable expenditures in a fiscal year are the first to be moved out to another fiscal year. In other words, the Board should adjust FY 2001 expenditures to move its last allowable FY 2001 expenditures to the FY 2002 grant in an amount that is equal to the FY2001 TANF share of the outstanding invoices. The FY 2002 grant should be adjusted to move its last allowable expenditures to the FY 2003 grant in an amount that is equal to the FY 2001 TANF share of the outstanding invoices. The FY 2003 expenditures will increase by an amount that is equal to the FY 2001 TANF share of the outstanding invoices.

By doing the adjustments above, there will be no requirement to amend the FY 2001 closeout package or FY2002 reported expenditures.

I.10 WIA Administrative Costs in the Workforce Centers (8/29/2003)

Should any of the costs incurred in the Workforce Centers meet the definition of WIA administrative costs? If yes, specify those costs by type.

I.10 Response

One-Stop Operators may have costs that would be classified as administrative. The preamble (p.49366) of the WIA Final Rule (20 CFR 667 et al., Vol. 65, No. 156, August 11, 2000) states the following:

"The revised definition provides that administrative costs are only those costs incurred for overall management purposes by State and local workforce board, direct WIA grant recipients, local grant subrecipients, local fiscal agents, and One-Stop operators…The only One-Stop operators' costs which are to be classified as administrative costs are those for one or more of the functions enumerated in Sec. 667.220(b) [see list below]…

…Only these enumerated administrative functions are to be charged as administrative costs. The costs of first line supervisors of staff providing direct services to participants are program costs…preparing program plans and negotiating MOU's and other program-level agreements are now classified as program costs even though they are often associated with general organizational management. Costs of such activities as information systems development and operation, travel, and continuous improvement are charged to program costs or administration, according to whether the underlying functions which they support are classified as programmatic or administrative…"

Those administrative costs as mentioned above include:

- Accounting and budgeting (except the preparation of program-level budgets);
- Financial and cash management;
- Procurement and purchasing;
- Property management;
- Payroll and personnel management;
- General oversight, audit and coordinating the resolution of findings from audits, reviews, investigations, and incident reports;
- General legal services;
- Developing and operating systems and procedures, including information systems, required for administrative functions; and
- Oversight and monitoring related to WIA administrative functions.

Those costs incurred by a WIA service provider (other than One-Stop Operators) whose contract's intended purpose is to provide identifiable program services, do not have to be identified, tracked or charged to Administration.

I.11Chamber of Commerce Dues (9/23/2003)

The Board is establishing a business service unit and would like to join the Chamber of Commerce. There are annual dues and a one-time membership fee. Are these costs allowable?

I.11 Response

The costs (annual dues and the one-time membership fee) to join groups, such as the Chamber of Commerce, are allowable as long as the Board does not use appropriated funds to pay membership dues to an organization that pays part or all of the salary of a person who is required by the Texas Government Code, Chapter 305, to register as a lobbyist (Texas Government Code, Chapter 556).

The following references provide the support for this type of activity cost.

- The current FMGC, Chapter 6, section 6.04(o) titled "Memberships, Subscriptions, and Professional Activity Costs," states, "Costs of the organization's membership in civic, business, technical and professional organizations are allowable." The current FMGC states that such costs (Section 6.04(o)) are allowable & grants a blanket approval through the wording in Section 6.04(o). Prior approval is required only if the membership costs were not included in the approved budget or if any one-time cost exceeds $500. If the one time cost exceeds $500, Form 7100 should be submitted to the appropriate TWC Senior Contract Manager for written approval.

- OMB Circular A-122, Attachment B, Item 30 and OMB Circular A-87, Attachment B, Item 30 both titled "Memberships, Subscriptions, and Professional Activity Costs" state, "(d) Costs of membership in any civic or community organization are allowable with prior approval by Federal cognizant agency."

- Workforce Investment Act, Section 667.262(1) states that "(a)…for purposes of this section, employer outreach and job development activities are directly related to training for eligible individuals. (b) These employer outreach and job development activities include: (1) contacts with potential employers for the purpose of placement of WIA participants (2) participation in business associations (such as chambers of commerce); joint labor management committees, labor associations, and resource centers; etc."

I.12 Classification of Child Care Monitoring Costs (11/4/2003)

Is program monitoring (client services, provider management, and billing) of the child care contractor an administrative or program cost? The program monitoring is occurring at the Contractor level, not the Board level. Would this make a difference on the response?

I.12 Response

Costs of monitoring or evaluating childcare provider is considered a program cost. However, costs of monitoring or evaluating vendors other than childcare providers are considered an administrative cost. WD 74-00 Child Care Cost Classification Desk Reference, page 12 and page 13 address both situations. If program monitoring conducted by a Workforce Board of their childcare contractor is an administrative cost if performed at the board level. WD 74-00 Child Care Cost Classification Desk Reference,

page 14 identifies "costs of compliance monitoring of a subrecipient or program evaluation" as administrative costs. In addition, Code of Federal Regulations Title 45 Public Welfare and Human Services, Volume 1, Part 98, subpart F, Sec. 98.52(v) Administrative Costs identifies "monitoring program activities for compliance with program requirements" as administrative costs.

I.13 Background Checks for Program Participants (11/17/2003)

Can a Board use FSE&T, TANF and WIA funds to pay for background checks required by employers before hiring a program participant?

I.13 Response

Yes. Although not specifically addressed by statute, regulation, or rule, the use of FSE&T, TANF, and WIA funds to pay for background checks required by employers before hiring a program participant is consistent with the intent of the laws, to the extent that:

- it is the employer's normal business practice to require potential employees to pay such costs;
- the costs are necessary and reasonable in accordance with UGMS, Part II, Attachment A, (C)(1)(a) and (C)(2); and
- the costs are allocable to federal or state awards under UGMS, Part II.

Note: TANF funds may only be used to pay for such costs to the extent that the conditions above are met and no other resources are available.

I.14 Profit for Wagner Peyser (12/5/2003)

Is profit allowable under Wagner Peyser? If so, what is the limit?

I.14 Response

Yes, subject to the applicable administrative provisions at 29 CFR 97, a fair and reasonable profit is allowable for commercial (for-profit) organizations under Wagner Peyser. In accordance with 29 CFR 97.36(f)(2), profit must be negotiated, "...as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work."

The provisions do not specify a fixed limit or ceiling for the amount of profit that is considered fair and reasonable; however, industry profit rates for similar work, referred to

in 29 CFR 97.36(f)(2) above, are generally limited to 10 percent of the contract's estimated cost, excluding fee. The 10 percent amount is also consistent with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR 15.404-4(c)(4)(i)(C) although the FAR should only be referenced as guidance since the provisions are generally not applicable to Wagner Peyser contracts made by grantees or subgrantees.

To Main Table of Contents

J. FINANCIAL REPORTING REQUIREMENTS

J.1 Obligation for Multi-Year Contracts
J.2 Clarification of "Assistance" for TANF
J.3 Definition of Obligation

J.1 Obligations for Multi-Year Contracts (11/27/2002)

Can obligations now be any signed contracts in their entirety and not just 90 days out?

J.1 Response

The definition of Obligation is as follows:
"Report a debt established by a legally binding contract, letter of agreement, sub-grant award, or purchase order, which has been executed prior to the end of the program year, for a good ordered or service provided by the end of the program year and which will be liquidated within 90 calendar days after the end of a program year."

Therefore, you should only report an obligation for those funds in which a debt has been established under those agreements mentioned above for services in that program year and which will be liquidated within 90 calendar days after the program year end.

Under the same scenario, the obligation amount to be reported on the March 2003 monthly financial report would be the amount of the service that is intended to be provided from March 1, 2003, through June 30, 2003 (4 months). Keeping in mind that those amounts obligated must be liquidated within 90 calendar days after the end of the program year.

When reporting July 2003 monthly expenditures and obligations, the Board will then report obligations under that contract for a total of 12 months or the amount of the service that is intended to be provided from July 1, 2003, through June 30, 2004. The remaining one month under that contract will be obligated on the July 1, 2004, monthly financial report. For example, if you enter into a two year contract with a subcontractor in August 2002 using WIA funds, the Boards should only obligate 11 months (August 1, 2002, through June 30, 2003, end of program year) of that contract on the August 2002 monthly financial report (Form 5211) or the amount of the service that is intended to be provided for that period under the contract.

J.2 Clarification of "Assistance" for TANF (1/3/2003)

The reporting instructions provided by WD Letter 14-02 say payments for more than four months are reclassified as "Assistance" as defined in WD Letter 118-99. Are the first four months recorded as Non-Assistance and succeeding months as Assistance, or are all months reclassified as Assistance once the participant receive payments for more than four months?

J.2 Response

Boards should not be counting the first four months as Non-Assistance (short-term) and then after the 4th month reclassifying it as Assistance. If the Board is providing support services to an unemployed single parent or an unemployed two-parent family in order to meet the family's basic needs and those services are not designed as a short-term service (less than 4 months), the costs for those services should be classified as assistance for the first 4 months and any subsequent months, as long as they are eligible. Keep in mind, these are families that are already receiving TANF cash assistance from DHS.

For example, if you provide transportation to an unemployed recipient for 3 months, this is still considered 'assistance' because it was not designed to be short-term; if this recipient required 5 months of transportation, then you would have continued to provide this. However, if your Board's policy is to provide a one-time car repair, these would be classified as short-term non-recurrent since they're not designed to last more than 4 months, they're designed to address a specific crisis or episode of need.

J.3 Definition of Obligation (2/17/2003)

Can you explain why the definition of Obligation that you outlined in J.1 is not the same as the definition on the Allocation Rule Section 800.52? When was the change reflected and would we have not received notice of it? Or will the new definition not be reflected in the adopted TWC Allocation Rule?

J.3 Response

The definition of Obligation as defined in the instructions of the monthly expenditure report was changed in anticipation that the definition as written in the Allocation Rule Section 800.52 was also to be changed; however, with competing priorities, the change in definition within the TWC rules has not moved as quickly.

The purpose of this anticipated change is to clarify the current definition with new language. The two definitions are largely the same, but not precisely the same, in that the obligation as defined under the current TWC rule allows for a longer period (services performed 90-days after the end of the program year) in calculating the amount to be obligated.

The preferred definition would be the new definition as defined in the instructions for the monthly expenditure report; however, the boards would not be considered out of

compliance by following the TWC rule definition as stated in the Allocation Rule Section 800.52.

To Main Table of Contents

E-mail Fiscal.TA@twc.state.tx.us for questions
Last Update: March 2004

K. FISCAL AGENT

Currently no questions or responses.

To Main Table of Contents

L. INDIRECT COST RATES

L.1 Acceptance of Contractor's Approved Indirect Cost Rates
L.2 Indirect Costs WIA Tile V

L.1 Acceptance of Contractors' Approved Indirect Cost Rates (7/17/2003)

Does a Board have to allow the use of an indirect rate that has been approved by a cognizant agency even if it appears to the Board that the rate is too high?

L.1 Response

No. Both OMB Circular A-87 and UGMS state, "Once a rate [indirect rate] has been agreed upon, it will be accepted and used by all Federal and state agencies unless prohibited or limited by statute." Local Workforce Development Boards are not state agencies and are not required to accept the use of an approved indirect cost rate. During the evaluation of proposals and contract negotiations, Boards should evaluate all indirect costs to ensure that such costs are reasonable, are an appropriate addition to the direct cost of goods and services and that such costs adequately benefit the Board. Such costs should be reimbursed to the extent that it can be demonstrated that the costs are allowable. "The steps in the negotiation process should be fully documented…" as described in FMGC 15.10(d). This would include justification for any indirect costs that are not allowed by the Board.

L.2 Indirect Costs WIA Tile V (8/27/2003)

Are indirect costs such as the following allowable costs for WIA Title V Incentive Grants, specifically for the Title V Interagency Agreement with Texas Higher Education Coordinating Board for the First Generation Contract:

- Salaries
- Benefits
- Professional Services (up to $25,000 per contract)
- Supplies and noncapital expenses
- Travel
- Rent
- Utilities
- Telephone

- Machine rental and maintenance
- Postage
- Other operating expenses

L.2 Response

The costs referenced above are generally allowable costs as long as they are: 1) reasonable and necessary, 2) conform to program or contract limits, 3) are accorded consistent treatment, 4) are in accordance with generally accepted accounting principles, 5) not used in matching requirement of another federal program, 6) are adequately documented, 7) are allocable to a particular cost objective, and 8) are net of applicable credits. See OMB A-122 Attachment A, and the One-Stop Comprehensive Financial Management Technical Assistance Guide, Chapter II-3 and II-4, for an overview of allowable WIA costs.

The Interagency Agreement between TWC and Texas Higher Education Coordinating Board limits administrative costs to 10% of the total award. Since indirect costs can be both administrative and programmatic, costs that are associated with administrative functions and costs associated with programmatic services must be allocated accordingly to determine if administrative expenditures are within the contract budget.

The definition of administrative costs may differ among federal programs. WIA Title V Incentive Grants are for the purpose of carrying out innovative programs consistent with the requirements of Title I or Title II of the Act. In the case of the Interagency Agreement with Texas Higher Education Coordinating Board for the First Generation Contract, the program must be consistent with Title I requirements. The Code of Federal Regulations, Title 20, Section 667.220 provides a detailed definition of WIA Title I administrative costs.

To Main Table of Contents

E-mail Fiscal.TA@twc.state.tx.us for questions
Last Update: March 2004

M. INDIVIDUAL TRAINING ACCOUNTS

Currently no questions or responses.

To Main Table of Contents

N. INSURANCE AND INDEMNIFICATION

N.1 Errors and Omissions Insurance
N.2 Insurance for Boards' Contractors and Participant Coverage
N.3 Insurance for the General Conduct of Activities

N.1 Errors and Omissions Insurance (2/11/2003)

Is an Errors and Omissions Insurance an allowable cost? If it is not allowable is there comparable insurance that would be allowable?

N.1 Response

The cost of Errors and Omissions (E&O) Insurance, also known as Professional Liability Insurance, is allowable for state and local governments in accordance with OMB Circular A-87, Attachment B, Paragraph 25 and the 2001 Uniform Grant Management Standards (UGMS), Attachment B, Paragraph 26. It is also a requirement under the Agency-Board Agreement, Section 12.5, between the Texas Workforce Commission and the corresponding Boards.

Section 12.5 of the Agency-Board Agreements state that "The Board shall assure that all workforce center subcontractors carry 'errors and omissions' insurance, or the equivalent, as well as other forms of insurance required by State or Federal law or regulation."

N.2 Insurance for Boards' Contractors and Participant Coverage (8/12/2003)

What insurance is the Board required to have for participants? Additionally, what insurance are Board contractors required to have?

N.2 Response

Boards must ensure WIA Title I participants have insurance coverage for work related injuries sustained while in a work experience activity. According to 20 CFR §667.274, if the employer's current employees are provided workers' compensation coverage, then the WIA participant involved in work experience must also be covered by workers' compensation. If the employer's current employees are not provided workers' compensation coverage, then the WIA participant is not required to be covered by workers' compensation. However, insurance coverage for injuries suffered on the job would have to be provided. The employer, the service provider, or the Board could provide this insurance.

Board contractors are required to have the following insurance coverage:

- Fidelity bond coverage (Agency-Board Agreement 15.1.7)
- Errors and omissions insurance or the equivalent (Agency-Board Agreement 12.5)
- Property insurance for non-governmental subcontractors (Agency-Board Agreement 19.3)
- General liability insurance (40 TAC §809.44)
- Commercially available insurance to cover any property or casualty claims, damages, or losses (including reasonable attorneys fees) resulting from the activities of the Board, its employees, contractors, agents or clients in any Agency facility in which the Board is co-located (Attachment A-2 of the Resource Agreement Grants, 5.1)

N.3 Insurance for the General Conduct of Activities (9/12/2003)

What insurance may a contractor pay for with TWC funds?

N.3 Response

Board contractors are required to have the following insurance coverage:

- Fidelity bond coverage (Agency-Board Agreement 15.1.7)
- Errors and omissions insurance or the equivalent (Agency-Board Agreement 12.5)
- Property insurance for non-governmental subcontractors (Agency-Board Agreement 19.3)
- General liability insurance (40 TAC §809.44)
- Commercially available insurance to cover any property or casualty claims, damages, or losses (including reasonable attorneys fees) resulting from the activities of the Board, its employees, contractors, agents or clients in any Agency facility in which the Board is co-located (Attachment A-2 of the Resource Agreement Grants, 5.1)

The above bulleted types of insurance are required, but that in accordance with UGMS, Part II, Attachment B, Paragraph 26, "costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:

(1) types and extent and cost of coverage are in accordance with the governmental unit's policy and sound business practice; and

(2) costs of insurance or contributions to any reserve covering the risk of loss of, or damage to, Federal Government or state property are unallowable except to the extent that the awarding agency has specifically required or approved such costs."

To Main Table of Contents

O. INTERNAL CONTROL

O.1 Financial Requirements for ETPS Training Providers

O.1 Financial Requirements of ETPS Training Providers (11/19/2002)

Do Eligible Training Provider System (ETPS) training providers have to abide by the guidelines in the TWC Financial Manual for Grants & Contracts (FMGC)? What are ETPS providers answerable for in the financial arena?

O.1 Response

The Financial Manual for Grants and Contracts (FMGC) would only be applicable when contracts existed between the Board and the ETPS training providers, and in such cases the contract should state whether the FMGC was to be followed. If a contract existed and required compliance with the FMGC, then you have the right to verify compliance based on the contract. We are not aware of any other requirements of a fiscal nature applicable to ETPS training providers since they are vendors and not subrecipients in most cases.

To Main Table of Contents

P. MISCELLANEOUS

P.1 Difference Between Fiscal TA and Fiscal Policy
P.2 Boards as Governmental Entities

P.1 Difference Between Fiscal TA and Fiscal Policy (11/22/2002)

Would you please explain for us the difference between "questions regarding fiscal policy or any other fiscal related issue" and " fiscal technical assistance?"

P.1 Response

Fiscal policy questions require interpretation of requirements or their applicability in a given circumstance (e.g. “Is it allowable to pay for background checks when doing so is required by the employer prior to employment?”). Fiscal technical assistance questions require assistance in applying a particular requirement (e.g. “How should the cost of equipment be allocated?”). However, Boards are not required to make this distinction. TWC reviews the questions that it receives through its Fiscal-TA e-mail account, and makes the determination on as to who at TWC will be responsible for responding to the question.

P.2 Boards as Governmental Entities (7/8/2003)

Under Texas law, are all Local Workforce Development Boards considered to be governmental entities?

P.2 Response

It depends on who is defining the entity. The most accurate statement is that a Board is not a governmental entity, but, by definition, some statutes and regulations apply to a Board as if it were a governmental entity.

To Main Table of Contents

Q. PERSONNEL

Q.1 Performance Incentives
Q.2 Applicability of Salary Classifications to Board Contractors
Q.3 Location of State Salary Structure

Q.1 Performance Incentives (12/19/2002, 10/1/2003 and 11/6/2003)

Is it allowable to provide Board and One-Stop Operator's staff with a performance incentive using TANF and/or FSE&T funds?

Q.1 Response

Fiscal-TA has received several questions regarding the allowability of incentive payments to Board and One-Stop Operator staff. These questions were answered separately, but the responses are combined below for clarity.

In general, performance incentives, including incentives provided in the form of bonuses or cash equivalents, are allowable costs to TANF and FSE&T provided that the compensation is allowable in accordance with applicable cost principles and other requirements (i.e. are not specifically prohibited, such as entertainment), and that:

- overall compensation, including the incentive, is reasonable for the services rendered;
- compensation is paid or accrued pursuant to an agreement entered into in good faith between the Board and its employees before the services are performed, or pursuant to an established plan followed by the Board so consistently as to imply, in effect, an agreement to make such payment;
- overall compensation is consistent with that paid for similar work in other activities of the organization or comparable to that paid for similar work in the area's labor market; and
- the compensation is adequately documented.

Specific guidance can be found in OMB Circular A-122, Attachment B, Item 7(c) and 7(i); OMB Circular A-87, Attachment B, Item 11; and UGMS, Part II, Attachment B, Item 11, as applicable. WD Letter 118-99, Attachment 2 provides additional detail regarding incentives funded by TANF.

In addition, the Board should have written policies and procedures for determining the reasonableness of overall and individual compensation amounts, allocation (including

criteria), and payment. The policies and procedures must be approved by the Board in an open meeting (in accordance with local procedures for approving personnel policies and/or procedures), and in place to making any incentive awards to employees.

Q.2 Applicability of Salary Classifications to Board Contractors (2/10/2003)

Are the Workforce Boards' contracts with the Workforce Center Service Contractors required to have a detailed listing of contractor staff, positions and salary ranges similar to those required in the HB1 Budgets, i.e. General Appropriations Act, 77th Legislature, Article IX, Section 6.13?

Q.2 Response

No, it is not required that Workforce Boards' contracts with Workforce Center Service Contractors include salary limitations specified in the General Appropriations Act unless the Workforce Center Service Contractor is a unit of local government. Section 6.13 of the General Appropriations Act defines a unit of local government as a council of governments, a regional planning commission, or a similar regional planning agency created under Chapter 391, Local Government Code; a local workforce development board; or a MHMR community center.

Q.3 Location of State Salary Structure (10/17/2003)

Where can I find the state salary structure?

Q.3 Response

The following website provides a current schedule:
http://www.hr.state.tx.us/Compensation/currentschedules.html

To Main Table of Contents

R. PROCUREMENT STANDARDS

R.1 Determining Amount of Questioned Costs
R.2 Formal Procurement When Only One Vendor Is Available
R.3 Services Extended for Personal Use in Scope of Services
R.4 Texas Job Hunter's Guide Booklet
R.5 Procurement for Vehicle Lease
R.6 TBPC and DIR Purchasing Programs

R.1 Determining Amount of Questioned Costs (4/8/2003)

If an organization appropriately applies the small purchase procurement procedures for goods/services, but the final amount paid exceeds $25,000, what is the amount that is generally questioned? Is it the amount that exceeds $25,000 or the whole amount?

R.1 Response

FMGC 15.06b states, "Purchases whose aggregate cost exceeds $25,000 must be procured using one of two formal advertisement methods." 15.06a states, "Aggregate purchases exceeding $25,000 shall not be divided to fall within the small purchase limit and avoid competitive biding requirements." These cites require that the entire procurement of goods or services that exceed $25,000 in the aggregate must be procured using a formal advertisement method.

Understanding that each procurement of goods and services is unique; procurements that do not fully meet requirements do not necessarily result in questioned or disallowed costs. Findings on non-compliant procurements can result in a non-monetary or administrative finding that requires corrective action and follow-up. The decision as to whether or not to question costs (and how much cost to question) must be determined using professional judgement by the entity that is performing the monitoring or auditing function.

R.2 Formal Procurement When Only One Vendor Is Available (6/26/2003)

A Board's DCCMS provider is required by contract to have a large training event by the end of their contract. This event must be held on a Friday and Saturday so that providers can attend. The Board also requested that a Provider Award Banquet be held at the same time. There is only one space available in this area with an open date in this time frame that will hold 700 people

and they have a list of required caterers. Is our contractor still responsible to go out with a formal bid for space and food? The total cost of the event will exceed $25,000.

R.2 Response

Since this procurement will exceed $25,000, it should begin with a formal competitive proposal process. FMGC §15.06c states, "A noncompetitive negotiation procurement resulting from inadequate competition must be preceded by a demonstrated good faith effort on the part of the contractor to solicit qualified providers through the small purchase, sealed bids or competitive proposal process." The noncompetitive negotiation method is limited to the following conditions: (1) items available through only one source, (2) awarding agency authorizes the procurement, (3) competition is deemed inadequate, or (4) public exigency or emergency exists [UGMS, Part III, Subpart C, §__.36(d)(4)(i)]. However, the contractor may not declare the existence of an emergency if the urgency is the result of poor planning. Documentation shall be maintained which substantiates why there was a deviation from full and open competition [FMGC §15.02d] and a cost analysis must be performed [FMGC §15.05].

Contractors are generally neither required nor prohibited to procure facilities and catering for the same event as a package or as separate services, as long as the intent of procuring separate services is not to divide aggregate purchases exceeding $25,000 to fall within the small purchases limit [FMGC §15.06].

R.3 Services Extended for Personal Use in Scope of Services (7/3/2003)

Can the scope of services in a Request for Proposals (RFP) for depository services include a requirement that proposers include both the courtesy services available to the Board and to the Board's employees (as if the employees were acting independently on their own behalf) in their proposals? The information regarding courtesy services to employees will not be used in the evaluation process, and is only intended to promote competition.

R.3 Response

The RFP's scope of services may include the requirement for depository institutions to provide a listing of the courtesy services that it would offer to the Board, but should exclude the requirement to provide those courtesy services that individual employees acting on their own behalf could receive.

In accordance, with OMB Circular A-87, Attachment A, (C)(2)(a), "In determining reasonableness of a given cost, consideration shall be given to: whether the cost is of a type generally recognized as ordinary and necessary for the operation of the governmental unit or the performance of the federal award." Although the cost of including the phrase is minimal, and the stated intent of the phrase is to increase competition, it creates an appearance of personal benefit to the Board's employees, and would therefore represent a cost that is neither ordinary nor necessary for the operation of the organization or for the performance of an award.

Additionally, OMB Circular A-122, Attachment B, Item 18 states that, "costs of goods or services for personal use of the organization's employees are unallowable regardless of whether the cost is reported as taxable income to the employees." The portion of the RFP that would appear to benefit the Board's employees for their personal benefit is considered to be a cost of goods or services for personal use and would not be allowable.

R.4 Texas Job Hunter's Guide Booklet (8/12/2003)

Has TWC already procured the Texas Job Hunter's Guide, and if so would a Board's contractor be able to purchase $1700 of the booklets from TWC Career Development Resources without conducting additional procurement activities?

R.4 Response

Texas Job Hunter's Guides as well as many other workforce related resources may be purchased through TWC Career Development Resources (TWC-CDR). The phone number is 512-491-4968. You can also obtain a product list and order form from the TWC-CDR website at http://www.cdr.state.tx.us/Order/OrderForms/OrderForm.html and mail the order with payment to TWC/CDR 9001 IH 35 No., Suite 103B, Austin, TX 78753-5233.

In some circumstances publications such as these may be considered as available from only a single source and therefore may be procured through the noncompetitive negotiation method as outlined in FMGC 15.06(c). This method requires cost negotiations and a thorough cost/price analysis. [Note: This paragraph was subsequently added for clarity.]

R.5 Procurement for Vehicle Lease (9/11/2003)

A Board contractor is entering into a vehicle lease for a pick-up truck. It is not a lease-purchase agreement. Bids were obtained. Is prior approval required to enter into the lease since it is not property that is being purchased, i.e. are TWC Forms 7100-7400 applicable?

R.5 Response

No prior approval is required to enter into an operating lease unless the lease agreement will exceed $25,000 in the aggregate, and non-competitive or sole source procurement was conducted. Form 7100 "Request for Purchase Review" is not required for operating leases.

If, however, the lease is a capital lease, such as a lease purchase or other lease that meets the definition of a capital lease as defined in FMGC §16.07, the property must be capitalized and depreciated, and the lease obligation amortized in accordance with GAAP. If the present value of the lease payments exceeds $500, the leased property must be accounted for as non-expendable property as stated in FMGC §16.08. Similarly, if the

present value of a capital lease is $5,000 or more, prior written approval must be obtained using TWC Form 7100.

Section 16.07 of the FMGC states:
"GAAP requires that a capital lease be accounted for as an acquisition if the lease meets any of the following:

- the lease transfers ownership of the property to the lessee by the end of the lease term.
- the lease contains an option to purchase the leased property at a bargain price.
- the lease term is equal to or greater than 75 percent of the estimated economic life of the leased property.
- the present value of rental and other minimum lease payments equals or exceeds 90 percent of the fair value of the lease property, less any investment tax credit retained by the lessor.

The last two criteria are not applicable when the beginning of the lease term falls within the last 25 percent of the total estimated economic life of the leased property."

R.6 TBPC and DIR Purchasing Programs (10/2/2003 and 12/19/2003)

What requirements apply to the use of the Texas Building and Procurement Commission (TBPC) and Department of Information Resources (DIR) purchasing programs that are available to Boards? What are the processes and procedures for using the state list of approved vendors? Are there any required forms? Can more than one vendor be selected for one project? Must the vendor be on the list the day of selection?

R.6 Response

Changes in state law extended certain state purchasing services to Local Workforce Development Boards (Boards). Board subcontractors are not automatically included in this change. State statute limits participation in the TBPC Purchasing Cooperative to local governments, local workforce development boards, Mental Health Mental Retardation Community Centers and certain assistance organizations. Similarly, only Texas state agencies, local workforce development boards, public institutions of higher education, public school districts and other local governments may participate in the DIR GoDIRect program. Non-profit organizations that are not local workforce development boards may not participate in the GoDIRect program. Both Boards and Board subcontractors may use TBPC's Centralized Master Bidders List (CMBL) and Catalog Information Service Vendor (CISV) list.

The vendors that participate in the TBPC Purchasing Cooperative and DIR GoDIRect program were competitively procured by TBPC or DIR, respectively. The goods and services that are available under the resulting state term contracts are available to Boards at state contracted prices. Since these vendors have been competitively procured, Boards

may purchase goods or services through either of these two programs without obtaining competitive bids or proposals. Boards are not required to obtain prior approval from TWC to participate in either of these two programs, but should document and make available to monitors and other authorized personnel, the state term contract number used.

Vendors on the CMBL and CISV list have not been competitively procured. A Board should only use these lists to develop its own list of vendors from which it will solicit bids. Vendors do not have to be on the CMBL or be a CISV in order to do business with a Board, and TWC does not require prior approval for purchases from these vendors; however, all procurement requirements, including those relating to the prior approval for property, must be met.

Detailed information for these services, including instructions and required forms, is available from the TBPC and DIR at:

TBPC Co-Op: http://www.tbpc.state.tx.us/stpurch/coopmain.html
DIR GoDIRect: http://www.dir.state.tx.us/store/busops/go-direct/index.htm
TBPC CMBL: http://www.tbpc.state.tx.us/cmbl/index.html
TBPC CISV: http://www.tbpc.state.tx.us/stpurch/cisv.html

Boards must submit Form 7100, Request for Purchase Review, for any purchase with an aggregate total cost of $5,000 or more, including data processing hardware and software. Form 7100 is available at the following URL: http://intra.twc.state.tx.us/intranet/wf_fin/html/rptforms.html.

To Main Table of Contents

S. PROGRAM INCOME

S.1 Use Fees for Equipment Used by Other Programs
S.2 Profit Earned from Entrepreneurial Youth Activity
S.3 Reporting Program Income

S.1 Use Fees for Equipment Used by Other Programs (2/4/2003)

A training vendor used Wagner-Peyser funds to purchase equipment that is used to provide GED training services. Fees for GED training to WIA participants are paid by WIA grant funds. How should the tuition fee income be recorded on the books of the training vendor?

S.1 Response

In cases where federal revenue enables the generation of additional revenue, the additional revenue is considered program income. In the situation described above, the tuition income is program income to the Wagner-Peyser grant.

Regarding the actual accounting entries to record these transactions, there are two methods: the net income method and the gross income method. The Department of Labor's (DOL) One-Stop Comprehensive Financial Management Technical Assistance Guide, Chapter II-7) describes these methods. The guide is located on the DOL web site at: http://www.doleta.gov/sga/pdf/FinalTAG_August_02.pdf.

S.2 Profit Earned from Entrepreneurial Youth Activity (5/13/2003)

Under a WIA Youth activity, youth participate in an entrepreneurial activity in which WIA funds the initial start-up costs of the project (e.g., materials). The youth then operate the business and sell the products they make in local consignment shops.

1. Does the project have to reimburse WIA?
2. If the income must be reimbursed, can the project reimburse WIA for initial start-up costs only and the students keep any subsequent profits?
3. Does the project have to give all profit to WIA, from start-up through the life of the business?

S.2 Response

Assuming these costs are allowable under the WIA Youth program, the income generated through this type of activity is considered program income and must be used to support the program that generated it (FMGC 8.01a and 8.01b). Both 29 CFR 95.2(bb) and 29

CFR 97.25 specifically include income from the sale of commodities or items fabricated under an award as program income.

Program income in excess of incidental costs used to generate it must be used o defray all program costs, not just the start-up costs. This includes, not only material used to manufacture products, but also all administrative and program costs such as salaries, supplies, and indirect costs associated with and allocated to the award. Income may be retained by the administrative entity, not the participants, and used to continue to carry out the program [see WIA section 195(7)].

There is no federal requirement governing program income earned after the end of the award period (29 CFR 95.24b and 29 CFR 97.25(h). It would be up to the Board or, if the Board so delegates, the service provider to determine the disposition of additional income.

Note: Program income generated by this activity should be incidental to training goals. The goal should not be product development, economic development, or speculative profit on the open market (FMGC 8.01a).

S.3 Reporting Program Income (10/14/2003)

A Board's Contractor earned program income in excess of total program costs through activities funded by a Wagner Peyser 7(b) grant. An amendment was executed to add this income to the budget and the contract period was extended. During the amendment period the contractor earned additional income over program costs. How should these funds be classified and reported?

S.3 Response

Program income earned by activities funded with program income is still program income and should be reported as additional funds to the program. 29 CFR 95.2(bb) states, "Program income means gross income received by the recipient that is directly generated by a supported activity or earned as a result of the award. Furthermore, Section 95.24 states, "(a) . . . program income earned during the project period shall be retained by the recipient and added to funds committed to the project by DOL and recipient, and used to further eligible project or program objectives." Program funds and program income in excess of program costs and costs incidental to the generation of program income must be disbursed to the grantor at the end of the award period.

In contrast, income earned as a result of a federally funded activity after the award period is not considered program income of the award, does not have to be reported to the grantor and may be retained and used by the recipient. 29 CFR 95.24(b) states, "Recipients shall have no obligation to the Federal Government regarding program income earned after the end of the project period."

To Main Table of Contents

T. PROPERTY STANDARDS

T.1 Use of Federal Funds for Leasehold Improvements
T.2 Capitalization of Fixed Assets
T.3 Certification of Use and Disposition of Non Expendable Personal Property
T.4 Difference Between GASB and FMGC Capitalization Thresholds
T.5 Donation of Property in Lieu of Award
T.6 Submission Requirements for Form 7300

T.1 Use of Federal Funds for Leasehold Improvements (7/8/2003)

Can TANF/Choices dollars be used to expand the physical size of a classroom used for classroom training (i.e. a leasehold improvement to an existing building)?

T.1 Response

Federal funds (specifically Choices/TANF dollars) can be used for leasehold improvements, as an allowable item of cost, provided that prior written approval from the Commission was obtained.

Principles to be applied in establishing the allowability or unallowability of certain items of cost are found under the Office of Management and Budget Circular A-87, Attachment B; Uniform Grant Management Standards, Attachment B; and the Financial Manual for Grants and Contracts (FMGC), Chapter 6, in which each has a section that addresses Rearrangement & Alterations. The FMGC, Chapter 6, Section 6.04 states: "Costs incurred for rearrangement and alteration of facilities are allowable provided the organization has obtained prior written approval from the Commission."

T.2 Capitalization of Fixed Assets (8/19/2003)

Is it correct that the current threshold for fixed assets according to TWC is $500, and that any per unit acquisition over $500 per unit, with a life longer than a year, should be categorized as a fixed asset for inventory and depreciation purposes?

T.2 Response

This is correct. According to the definition of "capitalization" at FMGC §16.01, items with a useful life extending over more than one year, and a unit acquisition cost that is the lower of $500 or the threshold established by the contractor's accounting records must be capitalized.

T.3 Certification of Use and Disposition of Non Expendable Personal Property (9/18/2003)

On the Certification of Use and Disposition of Non-Expendable Personal Property form used by the Texas Workforce Commission [in the closeout package], the threshold is an acquisition cost of $1,000 or more per unit. Why should a Board have to maintain records for the $500 amount given this and GASB 34 requirements? Also, on the same report, section 16.05 (exhibit 16-2 Priority of Equipment Use) of the TWC Financial Manual for Grants and Contracts (FMGC) is quoted as the reference for the $1,000 per unit threshold, but the FMGC does not address the $1,000 requirement.

T.3 Response

Boards are contractually required to comply with the $500 threshold in the FMGC. The threshold is under review for a change that would bring it into alignment with Uniform Grant Management Standards (UGMS), a $1,000 threshold, but the $500 threshold will continue to be applicable to Boards until the change has been published.

Therefore, property with a Unit Acquisition Cost (UAC) of $1,000 or more must continue to be used solely for program purposes for as long as needed after closeout. If no longer needed by the program, the property must be used for other purposes as described in Section 16.05 of the FMGC under the subsection "Use of Equipment." (Section 16.05 is not intended to be a reference for the $1,000 per unit threshold in the closeout form.) Regardless of whether the property is being used by the program or for other purposes, if it has a UAC of $500 or more it must be capitalized until it is disposed of in accordance with FMGC 16.06. The property may be disposed of when it is no longer needed by the program or any authorized purpose; however, all TWC thresholds for prior approval continue to apply.

T.4 Difference Between GASB and FMGC Capitalization Threshold (9/18/2003)

Is it allowable for us to raise our fixed asset capitalization threshold from $500.00 to 5,000.00 when we implement GASB Statement #34?

T.4 Response

No. In order to comply with the requirements imposed by the Financial Manual for Grants and Contracts (FMGC), the $500.00 capitalization threshold must be used. A WD Letter is being drafted to increase the capitalization threshold to $1,000, which is the threshold in the Uniform Grant Management Standards (UGMS). Once the threshold in UGMS is revised to $5,000, TWC will then follow suit to increase the threshold to $5,000. In the meantime, the current FMGC requirement must continue to be observed until such time as such a change is published.

T.5 Donation of Property in Lieu of Award (10/1/2003)

Can a Board dispose of five computer workstations, having a fair market value of less than $1,000, by donating them to a local business to be used as a computer lab to train incumbent workers if: 1) the business' need for the computers was identified as a result of its response to an advertisement for Incumbent Worker Training for which it was not selected, and 2) the Board would develop an MOU with the business if the equipment were donated?

T.5 Response

Unless the selection criteria that was established prior to the issuance of the ad included the existence of a need for equipment, and the Board had established prior to running the ad that the method of providing financial assistance would be in the form of money, or property in the lieu of money, donation of the equipment to the business would violate FMGC 15.02c, "Equal Treatment. Equal opportunity must be available to all prospective sources of goods and services to be purchased. This means that equal access to bid specific information and evaluation must be ensured for all bidders and prospective providers." The donation and MOU would constitute an award that is based on information and evaluation procedures that are different from those used for other bidders since other bidders were not provided the same opportunity.

Furthermore, if the Board is still using, or can still use the computers in the program or project for which it was originally acquired, or in other activities that are currently or previously supported by a federal/state agency, the computers should not be disposed of, and should continue to be used for one of these authorized purposes [FMGC 16.06]. If no longer needed for an authorized purpose, "items of equipment with a current per-unit fair market value of less than $1,000 may be retained, sold, or otherwise disposed of as long as the program(s) that originally purchased the equipment is compensated for the existing per unit-fair market value at the time the usage of the property changes. Methods used to determined per-unit fair market value must be documented, kept on file, and made available to the Commission upon the request [FMGC 16.06]." In general, if no longer needed for an authorized purpose, the Board may donate the computers in accordance with its established procedures as long as the procedures are consistently applied, the program is compensated for the existing fair market value of the property at the time the usage changes, and no applicable federal or state laws, regulations, rules or other requirements are violated. Additionally, in accordance with WD 34-02, Boards must not allow a real or apparent conflict of interest to affect decisions involving public funds.

The Board may be advised that prior written approval is not required to dispose of property having a per unit fair market value of $1,000 or less; however, upon final disposition, Form 7400 must be submitted for the disposition of any equipment having a unit acquisition cost of $5,000 or more.

T.6 Submission Requirements for Form 7300 (10/3/2003)

What are the applicable use requirements and thresholds for Form 7300?

T.6 Response

Form 7300 must be used by both Boards, and their subcontractors, e.g. child care providers, workforce center operators, etc. for excess property that was purchased by the Board or subcontractor with TWC funds. Form 7300 does not apply to property that was purchased by the Agency and that has been loaned or surplused to a Board. Board subcontractors must submit the form through the Board with which they have contracted. Board subcontractors may not submit the form directly to TWC.

Equipment. Form 7300 "Notification of Excess Property" should be used only when the Board has determined that it has property that is no longer needed for an authorized purpose, and that property has a fair market value or unit acquisition cost that meets the criteria in the following paragraph. Form 7300 must be submitted by the Board, and disposition instructions must be received from the Agency prior to the Board taking any disposition action. Note: If the Board is requesting to dispose of property (for which Form 7300 must be submitted) with the intent of trading in the property or using its proceeds to purchase replacement property, that request should be noted on Form 7300.

Form 7300 must be submitted when the Board has excess property with a) unit acquisition cost of $5,000 or more; or b) a fair market value of $1,000 or more; or c) when both a and b are true. This is based on FMGC 16.05 which states, "The Commission reserves the right to transfer or issue disposition instructions for property with a UAC of $5,000 or more and/or a current per-unit FMV of $1,000 or more."

Real Property. If the Board has real property that is no longer needed for the originally authorized purpose, Form 7300 must be submitted and disposition instructions received from the Agency regardless of the property's UAC or FMV.

Supplies. Form 7300 is not applicable to supplies. However, the Agency may direct the Board to transfer or sell unused supplies with a total fair market value between $1,000 and $5,000 in accordance with FMGC 16.09f.

Condition. The following descriptions and definitions may be used to define the condition of the property on Form 7300:

- excellent--new or excellent condition
- good--new, used or reconditioned property, which has been renovated, and while still usable is slightly worn, but the utility is not impaired.
- fair-new or used property that is soiled or shopworn, rusted, deteriorated or damaged, and whose utility is slightly impaired; renovation or repair is expected in the near future.
- poor-new or used property so badly broken, soiled, mildewed, deteriorated or damaged and whose utility is seriously impaired.

*Note Boards are not required to use the definitions above.

Submission. Submit forms to the Contract Management Unit by mail or fax:

101 E. 15th Street, Room 408-T
Austin, Texas 78778
Fax: 512.936.3223

To Main Table of Contents

U. SINGLE AUDIT AND AUDIT RESOLUTION

U.1 Audit of Board Property Used by Board Contractor
U.2 Notifying TWC of Change to Fiscal Year
U.3 OMB Circular A-133 Increase to Threshold for Cognizant Agency

U.1 Audit of Board Property Used by Board Contractor (12/17/2002)

How should property be reflected on audit reports when a Board purchases the property but it is used, tracked and insured by a Board's subrecipient?

U.1 Response

The entity making the purchase should record the transaction in its books of account, and the asset should be reflected on that entity's balance sheet as an asset on audit reports.

U.2 Notifying TWC of Change to Fiscal Year (5/13/2003)

A Board would like to change its fiscal year from a July/June fiscal year to a September/August fiscal year to simplify business and reporting. What paperwork is necessary with the Texas Workforce Commission to make this change?

U.2 Response

The Board can decide its own fiscal year with board approval. TWC would recommend coordinating with its outside auditor who performs the A-133 audit to obtain the necessary guidance on any impact it may have. Also, if the Board files a non-profit tax return each year, it will want to make sure any issues that affect the tax return and how it is filed after a 14-month transition are addressed.

Upon approval by the Board, notification of the fiscal year change should be sent to the Texas Workforce Commission. The notification should include a request for an extension of the OMB Circular A-133 audit to include the additional 2-month period that the fiscal year change would generate. The notification should be sent to:

Texas Workforce Commission
Attn: W. Boone Fields, Director
Audit Resolution & Closeout
101 E. 15th Street, Room 242T
Austin, Texas 78778-0001

U.3 OMB Circular A-133 Increase to Threshold for Cognizant Agency (8/11/2003)

The United States Office of Management and Budget (OMB) is issuing final revisions to Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations". One of the revisions is to increase the threshold for cognizant agency for audit from $25 million to $50 million. What does this mean in terms of the COG-TWC relationship?

U.3 Response

This revision applies only to those non-federal entities (States, Local Governments or Non-Profit Organizations) that receive direct funding from the federal government and expend $50 million or more in federal funds within a single fiscal year. Therefore, this revision will have no affect on the COG-TWC relationship.

To Main Table of Contents

V. SUPPORTIVE SERVICES AND PARTICIPANT PAYMENTS

V.1 Immunizations for WIA Youth
V.2 Timesheet for Deceased Participant
V.3 Providing Transportation with TxDOT Funds
V.4 Gift Cards for FSE&T Incentives to Customers who Enter Employment
V.5 Payment of Support Services to Project RIO Clients

V.1 Immunizations for WIA Youth (4/8/2003)

Can WIA Youth participant immunizations be paid as a supportive service?

V.1 Response

Yes, the cost of immunizations for a WIA Youth participant is an allowable expenditure provided it is necessary to enable the individual to participate in an allowable activity.

The rules for WIA Youth support services include the following:

- The WIA Act, Public Law 105-220, Section 101 defines supportive services as "services such as transportation, child care, dependent care, housing, and needs-related payments, that are necessary to enable an individual to participate in activities authorized under this title, consistent with the provisions of this title."
- 20 CFR Part 664.440 of the WIA Final Rules includes referrals to medical services as an allowable support service.

As an example of this rule, if the employment strategy for a WIA Youth participant called for enrollment in a special school that required tetanus vaccinations, the cost for such an immunization would qualify as an allowable support service cost. However, the cost of certain immunizations to enable a youth to visit relatives in a foreign country would not be allowable.

V.2 Timesheet for Deceased Participant (7/9/2003)

A WIA Youth participant died in a car accident after only working one day. He hasn't signed his timesheet, but he did work 8 hours. Please advise as to how to handle his check and timesheet concerning signatures that would be in compliance with monitoring rules.

V.2 Response

The participant's supervisor may verify and approve the participant's timesheet and attach a statement describing the reason the time sheet was not signed. Release of the participant's check would depend on local policy and various legal status factors, including age, marital status, etc. Consultation with the Board's legal council is advised.

V.3 Providing Transportation with TxDOT Funds (11/4/2003)

Are there any restrictions on the use of the TxDOT funds for transportation? In other words, what constitutes a transportation expenditure (e.g., gasoline assistance, bus passes, car repairs)?

V.3 Response

According to Rider 56 of the Texas Department of Transportation's (TxDOT) general appropriation, funds were appropriated "to be used to provide client transportation services as required by federal and state programs affected…" As such, any transportation related expenditure under the TANF and FSE&T programs that would be reported on the monthly expenditure report as an allowable transportation expense, would be covered under this transportation services contract. Therefore, gasoline assistance, bus tokens/passes, car repairs, etc. would be considered a valid transportation expense under this contract. All transportation expenses are required to be tracked in TWIST. Under the transportation service contract, the Boards will be required to submit a final report at the end of the grant year to TWC identifying the nature of the transportation expenditures.

TWC will have further discussions with the TxDOT on what will be covered under the new infrastructure that TxDOT is putting in place. In the future, it may be that the non-public transportation expenses will have to be paid by the Boards' TANF and FSE&T allocations; however, we are not sure at this time.

V.4 Gift Cards for FSE&T Incentives to Customers who Enter Employment (11/6/2003)

Can incentives in the form of gift cards be provided to FSE&T customers who enter employment?

V.4 Response

Incentives provided to FSE&T customers out of FSE&T funds are only allowable for items that are necessary to participate in the program. Therefore, if

the Board or Workforce Center Operator can not ensure incentive gift cards are used for purchases meeting this requirement it is not allowable. 40 TAC 813.41(a) states, "Boards shall ensure that E&T support services are provided to an E&T mandatory work registrant if the support services are reasonable, necessary and directly related to participation in E&T activities."

V.5 Payment of Support Services to Project RIO Clients (11/7/2003)

Please clarify whether or not supportive services (i.e., transportation, financial assistance) can be paid for RIO clients?

V.5 Response

Yes, Project RIO funds may be used for the provision of support services in accordance with 40 TAC 847.41(a) which states, "A Board shall ensure that support services, which address barriers to employment or participation in employment services, are provided to a Project RIO job seeker as determined by the Board's policies and Individual Employment Plans, and the Texas Workforce Center operator, or the Board's designated service provider." A technical assistance bulletin erroneously indicated that Project RIO funds could not be used for support services.

In addition, Food Stamp Employment and Training (FSE&T) funds can be used for allowable FSE&T support services to those Project Rio clients that are FSE&T eligible.

To Main Table of Contents

W. TRAVEL

W.1 Prior Approval for Travel to Mexico by For-Profit One-Stop Operator
W.2 Non-Mandatory Board Use of State-Contracted Airlines and Rates
W.3 Identification cards for Board Staff and Board Members
W.4 Airline Tickets Purchased by Board on Behalf of Its Contractors
W.5 Reimbursement to Board Employee for Mileage Between Home and Work
W.6 Lodging that Exceeds Comptroller's Maximum Out-of-State Reimbursement Rates
W.7 Higher Reimbursement Rates for Boards' Executive Directors
W.8 Applicability of WD Letter 35-03 to Board Contractors
W.9 Travel Costs of Prospective Board Members

W.1 Prior Approval for Travel to Mexico by For-Profit One-Stop Operator (5/2/2003)

Does TWC have to give prior approval for a Board's for-profit One-Stop operator to travel to Mexico?

W.1 Response

No, TWC would not have to give approval for subcontractor travel to Mexico. Unlike FMGC travel polices for the Local Workforce Development Boards and Councils of Governments which must comply with the State of Texas employee travel policies, the FMGC states that travel policies for for-profit subcontractors are based on current federal, state and/or local government travel policies (FMGC Chapter 10). Note, however, that WIA Title IB funds can not be used for foreign travel [WIA sec. 181(e); 20 CFR 667.264(b)]. Therefore, WIA Adult, WIA Dislocated Worker or WIA Youth funds cannot be used for this type of expenditure.

Cost principles for for-profit organizations are found in 48 CFR 31.2. Section 31.205-46 concerns travel costs and has no requirements for approval from an awarding agency for foreign travel. The principle requirements in this rule is that the costs must be incurred for official company business, are reasonable and allowable expenditures, and are based on the rates and supported by the required documentation established in this section.

W.2 Non-Mandatory Board Use of State Contracted Airlines and Rates (6/13/2003)

Are Local Workforce Development Boards (Boards) required to use the State-contracted rates for airlines instead of lower airfare rates.

W.2 Response

As noted in WD Letter 23-03, the General Appropriations Act, Article IX, Section 5.01 includes Boards in the definition of a state agency. And therefore, Boards can benefit from the use of State-contracted airfare, rental car and lodging rates. However, the Boards are not required to use the State-contracted airfare rates if there is a lower rate available that meets the travelers needs. TWC does point out in the "Background" section of the WD Letter that there are costs that may be added to the lower fare if changes in travel require the cancellation and/or rebooking of the lower airline fare. These added costs could potentially exceed the costs for a State-contracted rate. All factors need to be considered as airline reservations are made.

W.3 Identification cards for Board Staff and Board Members (6/17/2003)

WD Letter 23-03 discusses developing identification cards for Board employees and Board members to avail themselves of state rates while traveling on official business. Any idea of the requirements for this card? What should it say? What shouldn't it say? What can't it say? Should we say we're employees of TWC?

W.3 Response

TWC is recommending the boards laminate their business card with the definition of a state agency (as stated in Article IX, Section 5.01) printed on the back of the business card. One Board has already developed a laminated card for their employees as described above and is willing to share their idea with other Boards. It is my understanding that the Board also took a Polaroid picture of the employee and attached it to the front of the business card.

W.4 Airline Tickets Purchased by Board on Behalf of its Contractors (6/30/2003)

If a Board makes travel arrangements and reimbursements for its Child Care Contractor or One-Stop Operator, can the Board buy airline tickets on behalf of its contractors? If the Board does this, can it continue to provide travel advances to its contractors as well?

W.4 Response

The state-contracted rates that are available to the Board members and Board staff are not available to the staff of the Board's childcare contractor or one-stop service providers. If the Board has a travel advance policy, it is up to the Board to determine if they want to continue to provide that service and to set policy on how that process will work.

W.5 Reimbursement to Board Employee for Mileage Between Home and Work (7/11/2003)

If an exempt employee, whose regular workweek does not include Sundays, is required in a particular week to work on Sunday, can the Board reimburse the employee for mileage between

the employee's home and headquarters? The distance, one-way between the employee's home and workplace is fifty miles.

W.5 Response

A state agency may not reimburse a state employee for mileage when the employee travels between the employee's residence and the employee's place of employment except as discussed below.

According the State of Texas Travel Allowance Guide, Section 4.06(C), Travel between A Residence and A Place of Employment, a state agency shall reimburse a state employee for mileage when the employee travels between the employee's residence and the employee's place of employment if:

- an extraordinary circumstance necessitates the travel; and
- the travel occurs during non-working hours.

In this subsection, "extraordinary circumstance" means an event that:

- threatens the public health or safety; or
- has caused or threatens to cause damage to public property.

The starting time of the travel determines whether the travel occurs during non-working hours.

W.6 Lodging that Exceeds Comptroller's Maximum Out-of-State Reimbursement Rates (8/19/2003)

Is there any flexibility on the Comptroller's maximum reimbursement rates for out-of-state lodging if the lodging where a particular conference is being held exceeds those rates?

W.6 Response

Lodging for out-of-state travel may not exceed the Comptroller's maximum reimbursement rate for the duty point for that day unless:

- It can be documented that the Board has confirmed with a travel agency that no safe lodging is available for less than or equal to the Comptroller's maximum lodging reimbursement rate for the duty point; or

- It has been documented that the result of staying at the lodging facility (i.e., conference site) would result in a decreased total cost of travel to the state (i.e., no rental car, parking and gas compared to taxi/free shuttle and the additional amount of lodging above the maximum lodging reimbursement rate.). Decreased costs could also include, if appropriate, the sharing of hotel rooms as mentioned below.

Another option available is as follows:

- The employee may reduce the Comptroller's maximum meal reimbursement rate for a duty point and then use the amount of the reduction to increase the Comptroller's maximum lodging reimbursement rate for the duty point.

All would have to be documented and approved by the Executive Director of the Board. Documentation would have to include mathematical calculations of the cost savings.

The Office of State Federal Relations (OSFR) would have to be notified prior to travel to Washington D.C., regarding the timing of the trip, the purpose of the trip, and the name of a contact person for additional information.

W.7 Higher Reimbursement Rates for Boards' Executive Directors (8/27/2003)

Can the Executive Director of an LWDB be reimbursed up to twice the amount of regular state rates in accordance with the State of Texas Travel Allowance Guide, Sections 3.16, 3.18 and 3.19?

W.7 Response

Yes. The Executive Director of the LWDB is classified as "a chief administrative officer of a state agency," and LWDB staff are classified as "state employees" for the purposes of Sections 3.16 and 3.18-3.19 of the State of Texas Travel Allowance Guide. These sections authorize the following individuals to receive a maximum reimbursement for meals and lodging up to twice the amount that could be reimbursed under Sections 3.03-3.06 and 3.10-3.11:

- the chief administrative officer of a state agency,
- a state employee who travels with the chief administrative officer of a state agency, or
- a state employee that is designated by the chief administrative officer of a state agency to represent the chief administrative officer of a state agency at a particular meeting or conference.

LWDB Board members are excluded from this authorization.

Documentation should be maintained to demonstrate that a) the travel of a state employee other than, or in addition to, the chief administrative officer of a state agency; and b) the meals and lodging actually incurred by the chief administrative officer and/or state employee are necessary and reasonable in accordance with the "Basic Guidelines" of OMB Circular A-87, Attachment A, (C).

W.8 Applicability of WD Letter 35-03 to Board Contractors (9/3/2003)

Do the latest mileage rates discussed on WD 35-03 applies to Board contractors?

W.8 Response

The mileage reimbursement rates set by Comptroller via the Legislature only apply to those agencies and entities considered "State Agencies." As per the definition in the General Appropriations Act, Article IX, Part 5, "a state agency includes the entities within the definition of §660.002(19) Government Code, and also includes a council of governments, a local workforce development board, or a MHMR community center, that uses funds appropriated by this Act to pay for the transportation, meals, lodging, or other travel expenses of its employees."

If you contract with someone that meets the definition above, they would have to follow the same reimbursement rules for mileage as mentioned in WD Letter 35-03. If they choose to reimburse at a higher mileage reimbursement rate, that entity would have to use funds other than State and/or Federal funds to reimburse the amount above the maximum reimbursement rate.

W.9 Travel Costs of Prospective Board Members (10/24/2003)

Can a Board pay for the lodging, meals and travel (mileage) costs associated with a Board retreat for prospective Board Members that are awaiting appointment to the Board?

W.9 Response

Prospective employees (board members) may be reimbursed for travel related to the employment interview or evaluation only. If the purpose of travel is to attend a retreat, then the travel is not allowable [State of Texas Travel Allowance Guide § 7.06 (p. 125)].

To Main Table of Contents

X. TWC RESPONSIBILITIES

Currently no questions or responses.

To Main Table of Contents