

WIRED Initiative

Uses of the H-1B funding revenue

Background:

The Workforce Innovations in Regional Economic Development (WIRED) grants represent an approach to preparing America's workforce for new and emerging occupations in regional economies. The grants are funded by revenue collected under 8 USC §1356(s)(2) (commonly referred to as H-1B funds), as authorized by the American Competitiveness and Workforce Improvement Act of 1998, Pub.L.No. 105-277 (codified, as amended, at 29 USC § 2916a). Section 2916a(2) of the U.S. Code establishes that U.S. Department of Labor WIRED (H-1B) funds are limited by law to the following:

1. Provide job training and related activities to assist workers (including unemployed and employed workers) in gaining skills and competencies needed to obtain or upgrade career ladder employment positions in high growth industries and economic sectors.
2. Assist in the development and implementation of model activities (such as develop curricula to build core competencies and train workers, identify and disseminate career and skill information, and increase the integration of community and technical college activities with activities of business and the public workforce investment system).

These funds are considered Federal funds and are subject to the common rules and requirements applicable to all Federal revenues used to fund grant activity and are limited to the uses authorized under ACWIA 2000, as amended, and referenced above. The use of H-1B funds must be tied to projects that target job training and related activities in high growth industries and economic sectors. Within the above parameters H-1B WIRED funds may be used to pay for the costs of training; curriculum development and dissemination; other career and labor market information; outreach and recruitment; tools, equipment and supplies used for training purposes; and other related costs. On the other hand, H-1B WIRED funds cannot be used to pay for product R&D; public

infrastructure improvements; inventory acquisition; or general business capitalization or expansion even though these activities may result in the creation of new jobs.

Purpose:

This paper provides additional guidance and explanation on the allowable or unallowable uses of the H-1B funds. It is not intended to cover every situation, item of cost or program activity, but rather as a guideline for grantees to use in the proper conduct of grant activity and reporting of costs for payment by the Federal government. The paper addresses some common issues that have arisen with the award and implementation of the grants and these issues are clustered by subject area. A list of references follows.

Over the first year of program implementation, a number of additional issues related to allowable costs have been identified. This revision to the allowable cost guidance is to provide further guidance and technical assistance for new topics and clarifying guidance, where appropriate, on the initial topics.

Outreach/Marketing

Funds may be used for the purpose of program and employer outreach or recruitment and for public relations purposes directly related to grant activity as specified in the Statement of Work (SOW) and/or implementation plan for each grant. The definitions of and conditions for charging these costs may be found in the OMB Cost Principle Circulars under the heading of Advertising and Public Relations costs(A-87, Attachment B, Item 1; OMB Circular A-122, Attachment B, Item 1). Advertising is defined as the costs of media, including television, print, and computer transmission media and the allowability of such costs is limited to staff recruitment, procurement, and specific purposes necessary to meet grant requirements. Public relations costs are more broadly defined and also include the costs of meetings as well as outreach efforts to the community, employers, and other members of the public related to grant activity.

For the WIRED grants, allowable public relations costs might include recruitment of industry or governmental participation in WIRED activities, providing information on the

project goals or outcomes to the public or other activities related to the SOW. In addition, public relations costs could include conducting market research related to high growth industries, occupational or training development needs. The media (or advertising) costs associated with specific grant outreach and allowable public relations activities would also be allowable. Any public relations or allowable marketing materials developed by the grantee must acknowledge the Federal funding source.

“Branding”

Any advertising costs that do not meet the conditions of the Circulars or do not support the allowable public relations activities specifically related to the grant and its authorizing legislation would be unallowable. The development of a “brand” for the entire economic region is more extensive and far-reaching than the WIRED grant and would include economic development, education, business and other sectors that are affected and part of the region’s overall economic growth. We would also expect that the use of the “brand” would also extend past the foreseeable life of the grant. If the WIRED project is part of the overall growth strategy of the region, and the development of the brand is not for the general marketing of the region, then some portion of the costs might be charged to the grant. If the “brand”, including such items as a logo or a slogan, is also used for marketing purposes, then, again, the costs would need to be divided or allocated between the allowable and unallowable activities. However, we would caution that any materials developed with grant funds and disseminated to the public must acknowledge the Federal funding source. This means that the “brand”, including logos, slogans, etc., must include the acknowledgement as well. Please note also that the Circulars prohibit the use of grant funds for costs of memorabilia and promotional items, including gifts and souvenirs.

Approval Authorities

The Governor is the grant recipient for the WIRED Initiative. As the grant recipient, the governor (or the designated agency) must request and receive prior approval when required for certain costs or activities such as budget realignments or other activities and costs requiring prior approval from the ETA Grant Officer. Only the grant recipient may request the prior approval of the ETA Grant Officer. All other entities, including the

primary project operator or administrative/fiscal entity (if outside state government) are considered as subrecipients of the grant. Subrecipients request prior approval from the awarding agency (with the exception of prior approval for equipment acquisition which is discussed below). States must follow their own processes and procedures for awarding and documenting any approval actions they take. This same premise is followed for additional levels of subgranting. If the primary project operator subgrants the funds to a variety of service providers, the service providers must request prior approval from the project operator. Each level follows its own processes and procedures provided they comply with the Uniform Administrative Requirements.

Equipment and Capital Assets

Equipment is defined for Federal grant purposes in the Uniform Administrative Requirements [see also 29 CFR Part 97 and Part 95 for definitions] as tangible property, with a useful life of more than one year and a per-unit cost of \$5,000 or more. For the WIRED grants, authorized equipment purchases are limited to equipment that is used for training purposes; not inventory acquisition or equipment needed for general business capitalization or expansion.

Equipment purchases require prior approval. For example, if the primary project operator wishes to acquire equipment to support the grant activity (for example, a specific type of medical equipment used in laboratory training), then they would request approval from the awarding agency, in this case the state (or the awarding agency in the case of subgrantees). The state grantee will then forward the request to the Grant Officer if they are in agreement and the ETA Grant Officer will either approve or disapprove the request. Maintenance, use and disposition of the equipment purchased with grant funds must be conducted in accordance with Federal property management standards found in the Uniform Administrative Requirements. Organizations may have lower dollar thresholds, but the requirement for Federal Grant Officer prior approval applies only to that equipment meeting the Federal definition.

The WIRED Initiative is intended to fund the development of new and innovative strategies for the transformation of the traditional workforce system and the expansion of employment and advancement opportunities in high-skill and high-wage occupations. ETA does not intend for the use of grant funds for construction of buildings and other capital expenditures. If equipment purchases, renovations, IT software and similar items are required to support grant activity, they must be in support of overall WIRED goals and relate to the activities specified in the SOW. The equipment needs should be tied to specific identified training needs and actual employment opportunities. As with all costs charged to the grant, the costs of equipment must meet the standards in the applicable Federal cost principles, including that the costs are reasonable and necessary to achieve grant outcomes. States must ensure that equipment acquisition requests meet these requirements when forwarding the requests to the Grant Officer. For example, the costs of specialized equipment needed to develop or expand training capabilities may meet the requirements if the acquiring organization were to demonstrate the link to increased job opportunities in the regional economy. Conversely, the acquisition of equipment by industry that is not linked to specific training and placement needs would not be an allowable use of the funds. The costs associated with the use of equipment that was not purchased with grant funds are covered below in Training.

Procurement

The Uniform Administrative Requirements require that all procurement transactions be conducted in a manner that promotes free and open competition and adherence to State and organizational procurement standards and processes. Utilization of one of the methods specified in 29 CFR 97.36(d) and compliance with the additional process requirements will satisfy the requirement for competition. There are four (4) methods specified and these methods cover most situations faced by a grantee in the procurement of both goods and services, including the appropriate use of non-competitive procurements. This means that for services to be provided under the grants, or for goods acquired for grant use, the procurement process must be followed and such actions documented. There is **one** exception to this requirement for those organizations meeting the definition of a partner organization. ETA has consistently held that for those

organizations meeting the partner standard, no Federal procurement process would be required. A partner organization is an integral part of the WIRED effort and must have been a “partner” in the development of the application and subsequent to the grant award, the implementation plan. It is an organization whose absence would lead to non-performance or failure. The work performed by “partner” organizations is integral to the successful operation and performance of the WIRED grant. The Regional Lead is an example of a partner organization. Conversely, a service provider is an organization that may be procured to provide specialized training services in emerging occupational areas. However, the provisions that partner organizations are outside the procurement process applies to the Federal requirements only. ETA does not have the authority to waive State procurement rules nor to waive State-imposed requirements on subgrantees.

Additionally, ETA’s definition of “partner” assumes that only the grantee and lead project operator would have “partner” organizations that meet the definition stated above. Partner activities are those specified in the original Statement of Work and/or Implementation Plan. Should additional projects or a change in the Region’s approach be identified, those partners would not receive preferential treatment in the implementation of such activities. The new activities are then subject to the procurement requirements specified in the Uniform Administrative Requirements. WIRED grantees are further cautioned that should new activities be identified that were not in the original Statement of Work, a modification to the grant must be requested and approved by the Grant Officer.

Curriculum Development and Intellectual Property

Curriculum development to provide the foundation of training in new or emerging occupations is an allowable use of the WIRED funds provided that such curriculum is tied to specific identified needs and actual jobs within the regional economy. For example, these may be new employment opportunities or curriculum developed to upgrade the skills of incumbent workers. The rules governing intellectual property will apply to any curriculum developed in whole or in part with WIRED fund. The Uniform Administrative Requirements [29 CFR 97.34] specify that such materials may be copyrighted and remain the property of the organization that developed the curriculum,

but, as they have been developed with Federal grant funds, the Federal government retains a nonexclusive irrevocable right to distribute, disseminate and otherwise use the materials. In addition, Federal funds may not be used to pay any royalty or licensing fee associated with such copyrighted material, although they may be used to pay for the costs of obtaining a copy which are limited to the developer/seller costs of copying and shipping. If revenues are generated through selling products developed with grant funds, these revenues are program income and their use is specified in the Uniform Administrative Requirements at 29 CFR 97.25 and 29 CFR 95.24. Program income is added to the grant and must be expended for allowable grant activities.

Training

Training costs are an allowable use of the H-1B funds. Training costs may include the costs of instructors, space, supplies and equipment specifically required for the training of new or incumbent employees and other costs ancillary to training for jobs in high-growth industries within the regional economy. These training costs, as with curriculum development costs, may be for training in new or emerging occupations or for the skills training of an employer's incumbent workforce to meet new requirements. Training costs cover a wide spectrum of costs, but must be linked to the activities delineated in the SOW. Training costs may consist of such items as salaries of in-house trainers providing direct training for eligible employees, development of materials and curriculum used in training, or travel costs associated with specific training activities. These costs may also include a proportionate share of the costs of employer-owned equipment, materials and inventory used directly during training activities and any maintenance or repair costs specific to the use of such equipment during training. A method for determining the proportionate share of such equipment could include depreciation and annual operating expenses, including maintenance and repair costs that would be applied to the time the equipment is used, either as specific costs or based on an hourly operating cost.

Consultant Fees

Consultant fees paid for professional consulting services are limited by the special terms and conditions of the grant to a daily rate of \$500.00 per day. This rate is similar to the

consultant rate utilized for government contractors. As determined by the Office of Personnel Management, the rate may not exceed the daily rate for a Level IV employee of the Senior Executive Service and is specified in the grant agreement. As it is specified in the terms of the grant, this restriction will apply to all subgrant arrangements as well. The restriction on rates applies to the fees charged for actual work performed and relates specifically to the salary rate of the consultant. A consultant is defined as an expert in a particular field or discipline that is called upon to provide technical or professional advice or opinions [*Webster's New World Dictionary, 2nd Edition*]. Consultant services normally do not include other types of professional services costs such as accountants, auditors, or outside legal counsel. If the grantee is procuring the individual services of a consultant, whether they are self-employed or employed through a firm or partnership, then the daily rate restriction will apply. If, on the other hand, the grantee is procuring a specific product such as an evaluation study or occupational needs research and the product is the primary result of the procurement, the price of the final product would need to meet the standards for allowable costs under the grant, including the need for the product and the reasonableness of the costs. These types of products are not considered consultant services.

Indirect Costs

Indirect costs are allowable costs to the WIRED grants provided they are claimed using an approved indirect cost rate (ICR). Indirect costs are generally the overhead costs of an organization and as there is no administrative cost limit for the WIRED grants, all approved indirect costs would potentially be allowable costs of the grant unless the State grantee or the region's lead agency negotiates lower rates and thus less recovery of the indirect costs with their subrecipient organizations. Federal agencies frequently negotiate lower recovery rates and there is nothing in the regulations or grant agreement that precludes the state grantee or lower tier subrecipients from negotiating recovery rates lower than the approved ICR if that is their policy.

Foreign Travel

Foreign travel is allowable under the OMB Circulars upon meeting certain conditions. First, the travel must be reasonable and necessary to achieve the grant objectives and not be related to an unallowable cost or activity such as general economic development. Second, all foreign travel must be approved in advance by the Grant Officer. Requests for approval should include detailed information that supports the request including costs as well as the purpose or reason for travel and how it relates to grant outcomes. Requests must be submitted to the ETA Team Lead in sufficient time for the Grant Officer to approve before any costs are incurred.

Entrepreneur Programs

A number of issues have arisen related to a variety of activities loosely categorized as “entrepreneur” or “entrepreneurship” programs. While the target of activities to assist entrepreneurs in the creation, filling and maintenance of jobs may be allowable, there are a number of restrictions on the use of the H-1B funds that need to be considered in designing and funding such programs. The funds may not be used to provide “seed money” or capitalization grants to private employers. Funds may be used to provide training to employees in newly created jobs as well as training and technical assistance to employers (entrepreneurs). Such technical assistance may include activities such as the design of courses to address needs of entrepreneurs, connecting entrepreneurs to capital such as angel networks whose investments will result in increasing jobs within the region, developing outreach strategies for engaging entrepreneurs in the WIRED project, etc.

Unallowable uses of H-1B funds

General economic development

General economic development projects do not meet the requirements of the H-1B legislation—for the training and development of job opportunities in high-growth industries, new and emerging businesses, or those jobs transformed by innovation or technology and requiring new skill sets. Examples of general economic development that may not meet this standard would be infrastructure investments in businesses, increases

in inventory, revolving loan accounts¹, new or additional equipment except when used for specific training activities, capital asset purchases and other costs not specifically related to increases in actual job opportunities.

Paid Employee Release Time

WIRED grant funds may not be used to pay the wages of employees for the time they are receiving training under the grant. Known as paid employee release time, these costs are properly the costs of the employer. WIRED grant funds may be used to pay for the training of employed individuals. Such training arrangements may include classroom training and on-the-job training. While the costs of such training may be expressed as an hourly cost, the hourly salaries of employees for training time would not be an allowable cost.

Lifelong Learning Accounts (LILA's)

Lifelong Learning Accounts or LiLAs, as defined by the Council on Adult and Experiential Learning (CAEL), are “employer-matched, portable individual savings accounts”. The H1-B fee revenue used to fund the WIRED grants is restricted to providing job training services in high growth industries and economic sectors. [29 USC Sec. 2916a(2)]. Therefore, any funds deposited to LiLAs from grant funds must be tracked, accounted for, and ultimately expended in accordance with these restrictions.

The practical application of these restrictions is outlined below:

- LiLAs are essentially a savings account and no expenditure of grant funds occurs until the funds are spent on eligible training activities.
- Grantees must track both the deposits to and expenditures against the individual LiLAs.
- All expenditures for allowable activities must occur within the grant period (3 years).

¹ Note: Revolving loan accounts are an unallowable use of H-1B funds; however, their use is authorized as part of economic development activities under the Workforce Investment Act as specified in 20 CFR 667.262 if they are directly related to training and are part of the funds leveraged within the Region to achieve grant aims.

- Unused funds in the individual LiLAs at the end of the grant must be returned to ETA.

Research and Development (R&D)

Research and development projects for the development of products related to an industry or cluster are not allowable as these are more properly costs of general economic development or employers. R&D costs, including the costs of employees, materials, and equipment used in the R&D process, should be leveraged through education or other partnerships as they do not meet the requirements of the H-1B authorizing legislation as specified on page 1 of this document.

References:

1. American Competitiveness and Workforce Improvement Act of 1998, Pub.L.No. 105-277 (codified, as amended at 29 U.S.C. § 2916(a). (Section 2916(a)(1) erroneously refers to section 1356(s)(2) of Title 29 when legislative history in fact indicates Title 8 is the appropriate citation,).
2. OMB Circular A-87, Cost Principles for State, Local and Indian Tribal Governments, May 10, 2004
3. OMB Circular A-122, Cost Principles for Non-Profit Organizations, May 10, 2004
4. 29 CFR Part 97, Uniform Administrative Requirements for State, Local and Indian Tribal Governments,
5. 29 CFR Part 95, Uniform Administrative Requirements for Non-Profit Organizations, Institutions of Higher Education and Commercial Organizations;
6. 20 CFR 667.200(a), WIA Regulations, August 12, 2001
7. WIRED Initiative SGA Frequently Asked Questions, Volume I
8. WIRED Initiative SGA Frequently Asked Questions, Volume II, December 15, 2005
9. WIRED Initiative SGA Frequently Asked Questions, Volume III, December 22, 2005
10. WIRED Frequently Asked Questions (FAQs), March 2, 2006
11. WIRED Grant FAQs, March 3, 2006
12. H-1B Grant Program Questions and Answers, undated
13. Webster's New World Dictionary, 2nd Edition, 1990