

EDGAR - Education Department Guidelines and Regulations

Sec. 74.24 Program income. *(Note: I underlined the key words from our perspective.)*

(a) The Secretary applies the standards contained in this section in requiring recipient organizations to account for program income related to projects financed in whole or in part with Federal funds.

(b) Except as provided in paragraph (h) of this section, program income earned during the project period must be retained by the recipient and, in accordance with ED regulations or the terms and conditions of the award, must be used in one or more of the following ways:

(1) Added to funds committed to the project by the Secretary and recipient and used to further eligible project or program objectives.

(2) Used to finance the non-Federal share of the project or program.

(3) Deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based.

(c) When the Secretary authorizes the disposition of program income as described in paragraphs (b)(1) or (b)(2) of this section, program income in excess of any limits stipulated shall be used in accordance with paragraph (b)(3) of this section.

(d) In the event that the Secretary does not specify in program regulations or the terms and conditions of the award how program income is to be used, paragraph (b)(3) of this section applies automatically to all projects or programs except research. For awards that support research, paragraph (b)(1) of this section applies automatically unless the Secretary indicates in the terms and conditions another alternative on the award or the recipient is subject to special award conditions, as indicated in Sec. 74.14.

(e) Unless ED regulations or the terms and conditions of the award provide otherwise, recipients have no obligation to the Federal Government regarding program income earned after the end of the project period.

(f) If authorized by ED or the terms and conditions of the award, costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

(g) Proceeds from the sale of property shall be handled in accordance with the requirements of the Property Standards (See Sec. Sec. 74.30 through 74.37).

(h) Unless ED regulations or the terms and condition of the award provide otherwise, recipients have no obligation to the Federal Government with respect to program income earned from license fees and

royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trademark Amendments (35 U.S.C. 18) apply to inventions made under an experimental, developmental, or research award.

Part C § 303.520:

(d) Proceeds from public or private insurance. (1) Proceeds from public or private insurance are not treated as program income for purposes of 34 CFR 80.25.

(2) If a public agency spends reimbursements from Federal funds (e.g., Medicaid) for services under this part, those funds are not considered State or local funds for purposes of the provisions contained in Sec. 303.124.

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Part C regs are clear that program income for Part C (family fees, public and private insurance) is EXEMPT and doesn't count against a state in 1) the distribution of Part C federal funds or 2) is included under the maintenance of effort principles of Part C. So, reductions to these sources in any given year wouldn't count against your state's nonsupplanting requirements.

I checked the Part C regs re: EDGAR and confirmed in 303.520:

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findings were issued against the states. NH had one memorable experience where their special ed Medicaid funds were used to buy new football uniforms ... DHHS didn't like that and called back the FFP (Federal financial participation) funds.

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