

November 9, 2006

**MEMORANDUM**

To: AESA

From: Maree Sneed  
Ambia Harper (*Not admitted to practice in the District of Columbia*)

**Re: Eligibility of Educational Service Agencies for Programs Under the Carl D. Perkins Career and Technical Education Improvement Act**

This memorandum responds to your inquiry regarding the opportunities for educational service agencies (“ESAs”) under the reauthorized Perkins Act, also known as the Carl D. Perkins Career and Technical Education Improvement Act of 2006 (“Perkins Act” or the “Act”).

**I. What Is the Purpose of the Perkins Act?**

The Perkins Act seeks to develop a stronger, more competitive labor force, by improving the career and technical education opportunities available to secondary and postsecondary students. Since it was enacted in 1984, the Perkins Act has supported states in their efforts to build vocational education programs that expand the career options available to students, create opportunities in economically depressed communities, and advance economic growth. The reauthorized Perkins Act continues these important projects but also incorporates new goals, including a greater emphasis on the academic achievement of career and technical education students, increased monitoring of career and technical education programs, and a new focus on accountability for these programs at the local level. Association for Career and Technical Education, Summary and Analysis of Major Provisions and Changes, 1 (August 4, 2006) (“ACTE Summary”). In July 2006, Congress approved legislation reauthorizing the Perkins Act until 2012. President Bush signed the bill into law on August 12, 2006.

**II. What Are the Major Changes to the Perkins Act?**

The structure of the program and its key provisions remain substantially the same, however there are several important changes that are worth mentioning.

#### *A. Global Changes*

In the recent amendments to the Act, Congress adopted the term “career and technical education” to replace the traditional term “vocational and technical education.” More than semantics, this change represents one of the important developments in the 2006 Act: a shift away from preparing students for discrete jobs to providing them with the tools necessary to build meaningful careers. To advance this goal, the Act provides for higher academic standards, makes core academic classes a larger part of the career and technical education curriculum, and requires the creation of coherent, rigorous, non-remedial courses of study. Perkins Act § 3(5). Prior versions of the Perkins Act also restricted vocational and technical education students to jobs that did not require baccalaureate, master’s, or doctoral degrees. ACTE Summary, 2. The recent amendments to the Act eliminated those restrictions.

#### *B. Allotment and Allocation*

Congress made several changes to the funding allocations in the latest version of the Act. The amount of funding going directly to states to be distributed to eligible institutions and eligible recipients has increased due to the elimination of the incentive grants program and a decrease in the amount of funds reserved at the federal level for assistance to the outlying areas. ACTE Summary, 3. The procedures governing allocation of funding among the states has also been revised to provide more equitable distribution to small states. Perkins Act § 111(a)(4)(B). The rules governing how states may use funds received under the Act remain largely unchanged, except that states may use a portion of the 5 percent of funds that may be used for state administrative activities to develop and support state data systems for use in career and technical education. ACTE Summary, 3.

The Perkins Act now provides for greater accountability for the success of career and technical education programs and, specifically, adds a section on local accountability that did not exist in the 1998 law. ACTE Summary, 4. The new provisions require recipients and institutions at the local level to establish performance targets and to report student progress on an annual basis. Perkins Act § 113(b)(4)(A). Secondary students academic achievement will now be measured by the academic assessments the state uses to monitor achievement under No Child Left Behind (“NCLB”), and graduation rates will be reported using NCLB definitions. ACTE Summary, 4. The success of technical education programs will be measured against industry-recognized standards and benchmarks, where possible. At the postsecondary level, separate reporting for academic attainment is not required, but alignment of technical assessments with industry standards is emphasized at this level as well. *Id.*

#### *C. State and Local Provisions*

In keeping with Congress’s desire to increase the reliability and success of career and technical education programs, the documentation and planning requirements at both the state and local level have increased considerably. To receive funding under the Perkins Act, states must submit a 6-year plan, covering the entire reauthorization period, that details the programs the state intends to implement, including how the state will support implementation at the local level; describes professional recruitment and professional development activities; discusses how the state will build stronger bridges between secondary and postsecondary career and technical education programs; and addresses a host of other factors, including monitoring the success of its programs, managing compliance with the Act, and addressing the needs of special populations. Perkins Act § 122(c). <sup>1/</sup>

Agencies receiving funding at the local level are required to submit plans to the state. Perkins Act § 134(a). In general, the content requirements for local plans are determined at the state level, but the Act now requires eligible recipients and eligible institutions to describe how they will meet performance targets, how they will offer appropriate courses and encourage rigorous and challenging academic curricula at the secondary level, how they will guide students in their choice of career path, how they will recruit, retain, and develop better career and technical education faculty and staff, and how they will target the needs of special populations. Perkins Act § 134(b).

#### *D. Tech Prep*

The Act maintains the Tech Prep program as a separate Title and funding stream. Perkins Act §§ 201-206. Tech Prep programs combine secondary career and technical education with post secondary education or apprenticeship programs to emphasize work-based and worksite learning experiences. States are no longer required to operate separate Tech Prep program, however. States now have the flexibility to consolidate their Tech Prep funds with their basic state grant, but they must indicate which approach they will take in their State Plans. Perkins Act § 202(a) & (b). The Act also adds new accountability and performance requirements to improve implementation of Tech Prep programs. Perkins Act § 203(e).

#### *E. General Provisions*

The most important change in this section is the further integration of private school students and personnel into public career and technical education programs. The Act now requires eligible agencies or eligible recipients to allow nonprofit private school personnel, upon their written request, to participate in professional development activities being offered in their geographical area, to the extent practicable. Perkins Act § 317(a). Eligible recipients may also, upon written request, use Perkins funds to

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<sup>1/</sup> “Special populations” is defined as (A) individuals with disabilities; (B) individuals from economically disadvantaged families, including foster children; (C) individuals preparing for non-traditional fields; (D) single parents, including single pregnant women; (E) displaced homemakers; and (F) individuals with limited English proficiency. Perkins Act § 2(29).

provide for the participation of students from nonprofit public schools. In addition, eligible recipients are required to consult with area nonprofit private schools, upon their written request, concerning the meaningful participation of private school students in career and technical education programs. Perkins Act § 317(b)(2).

### **III. Are Educational Service Agencies Eligible To Receive Funding Under the Perkins Act?**

The Perkins Act, by reference to the Elementary and Secondary Education Act of 1965 (“ESEA”), defines an “educational service agency” (“ESA”) as “a regional public multi-service agency authorized by state statute to develop, manage, and provide services or programs to local educational agencies.” Perkins Act § 3(11). <sup>2/</sup> The Act also incorporates by reference to the Elementary and Secondary Education Act of 1965 (“ESEA”), the current definition of “local educational agency” (“LEA”):

A public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or of or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary schools.

20 U.S.C. § 7801(26)(a). ESAs are included in the ESEA definition of LEA. 20 U.S.C. § 7801(26)(d).

There are three categories of entities that are eligible to receive funding under the Perkins Act: “eligible agencies,” “eligible institutions,” and “eligible recipients.” An “eligible agency” is the “State board designated or created consistent with State law as the sole State agency responsible for the administration of career and technical education in the State or for the supervision of the administration of career and technical education in the State.” Perkins Act § 3(12). ESAs do not satisfy the requirements for an eligible agency, and thus they cannot receive funding in this capacity. The

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<sup>2/</sup> The actual language in the Perkins Act reads: “The term ‘educational service agency’ has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965. Perkins Act § 3(11); ESEA, 20 U.S.C. § 7801(17). The Association of Educational Service Agencies (“AESA”) website offers a more complete definition:

The term `educational service agency'-- (A) means a regional public multiservice agency-- `(i) authorized by State law to develop, manage, and provide services or programs to local educational agencies; and `(ii) recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the State; and `(B) includes any other public institution or agency having administrative control and direction over a public elementary school or secondary school.

AESA website, <http://www.aesa.us/Legis/ESAs%20in%20ESEA.htm>

definitions of “eligible institution” <sup>3/</sup> and “eligible recipient” <sup>4/</sup> both include ESAs and LEAs. Therefore, ESAs may qualify for funding both as eligible institutions and eligible recipients, either as educational service agencies or because they are performing the role of local educational agencies.

#### **IV. How Can Educational Service Agencies Access Federal Funds Under the Perkins Act?**

As a general rule, the funds appropriated for the Perkins Act are allocated to the states, so that the states can use and distribute the funds to implement their State Plan in accordance with the requirements of the Act.

Sections 114 and 118, which provides for national activities to promote the goals of the Perkins Act, furnish the major exceptions to this rule. Section 114 requires the Secretary of Education to undertake several projects of national scope, including collecting and reporting on the performance of career and technical education programs; facilitating the collection of data required by the Act at reasonable cost; developing a single plan for research, development, dissemination, evaluation, and assessment of career and technical education programs; appointing an independent advisory panel to assist in the evaluation of these programs; establishing a national research center focused on career and technical education; and arranging demonstration career and technical education programs and disseminating information about best practices to assist states in the implementation of their programs. Perkins Act § 114. The Act does not specifically indicate that ESAs, LEAs, eligible institutions, or eligible recipients can perform these functions. Instead, the Act provides throughout Section 114 that the Secretary of Education may satisfy these requirements either directly, or through grants, contracts, and cooperative agreements. Perkins Act §§ 114(c)(1), (d)(2), and (d)(4). It is possible that ESAs with expertise in the areas outlined in the Act may compete for grants under Section 114.

Section 118 authorizes the creation of a national entity to support states in their efforts to implement statewide programs under Section 118(c), to disseminate information about best practices to states, to develop and distribute products and

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<sup>3/</sup> The Act states that “the term ‘eligible institution’ means: (A) a public or nonprofit private institution of higher education that offers career and technical education courses that lead to technical skill proficiency, an industry-recognized credential, a certificate, or a degree; (B) a *local educational agency* providing education at the postsecondary level; (C) an area career or technical education school providing education at the postsecondary level; (D) a postsecondary educational institution controlled by the Bureau of Indian Affairs...; (E) an *educational service agency*; or (F) a consortium of 2 or more of the entities described....” Perkins Act § 3(13) (emphasis added).

<sup>4/</sup> The Act states that “the term ‘eligible recipient’ means (A) a *local education agency*..., an area career and technical education school, an *educational service agency*, or a consortium, eligible to receive assistance under section 131; or (B) an *eligible institution* or consortium of eligible to receive assistance under section 132.” Perkins Act § 3(14) (emphasis added).

services to support states in their implementation of programs under Section 118(c), and to award grants to states that create state entities under Section 118(c) to fund the activities of those entities. Perkins Act § 118(a). ESAs will not be eligible for this funding at the national level, but they may be eligible for grants under Section 118(c), which provides that a state's eligible agency and Governor may "jointly designate an entity in the state" to perform a variety of functions, related to the development and dissemination of career guidance and academic counseling resources and occupational information. Perkins Act § 188(c).

## **V. What Opportunities Exist for Educational Service Agencies Under the Perkins Act's Major Funding Streams?**

There are five major areas of funding under the Perkins Act: Section 112(a)(3), which provides for state administrative activities; Section 124, "State leadership activities;" Section 131, "Distribution of funds to secondary education programs;" Section 132, "Distribution of funds for postsecondary education programs;" and Section 203, "Tech Prep Program."

### *A. ESA Eligibility under Section 112(a)(3)*

The Perkins Act allows states to direct not more than 5 percent or \$250,000, whichever is greater, to state administrative activities related to career and technical education programs. States may use these funds for: "(A) developing the State plan; (B) reviewing a local plan; (C) monitoring and evaluating program effectiveness; (D) assuming compliance with all applicable Federal laws; (E) providing technical assistance; and (F) supporting and developing State data systems relevant to the provisions of this Act." Perkins Act § 112(a)(3). As eligible recipients under the Act, ESAs that provide these services can apply for grants under this section.

### *B. ESA Eligibility for Section 124 funds*

The Perkins Act allows states to spend 10 percent of their total allocation to conduct state leadership activities under Section 124. Perkins Act § 112(a)(2). Section 124(b) outlines several required activities which states must carry out, including assessing their career and technical education programs, developing and improving their use of technology in these programs, professional development, preparing students for non-traditional fields in current and emerging professions, building partnerships to improve program quality, serving individuals in correctional facilities and special populations, and providing technical assistance to eligible recipients. The Act does not specify who or what resources may be used to carry out these activities. However, it seems likely that ESAs are eligible to compete for grants under Section 124(b).

Section 124(c) describes permissible uses of state leadership activity funds. In addition to listing a variety of activities where ESAs may be able to compete for grants, section 124(c)(10) specifically authorizes states to award "incentive grants to eligible

recipients (A) for exemplary performance in carrying out programs under this Act...; and (B) if an eligible recipient elects to use funds [for coordinated innovation activities with other eligible recipients] under section 135(c)(19).” Perkins Act § 124(c)(1)). ESAs who receive funding under the Act and who meet the standards established in section 124(c)(10) may be eligible for these incentive awards.

*C. ESA Eligibility for Sections 131 and 132*

The Perkins Act requires states to spend 85 percent of their total allocation on activities under Sections 131 and 132. Perkins Act § 112(a)(1). The amount of funds allocated to states under these sections is determined in part by the socioeconomic status of students being served. Under Section 131, socioeconomic status is determined based on the number of students from families below the poverty level. Under Section 132, socioeconomic status is determined by the number of students who are eligible to receive Federal Pell Grants or who are recipients of assistance from the Bureau of Indian Affairs.

Section 131(a) provides the general rule for distribution of funds to secondary education programs: “Except ...as otherwise provided in this section, each eligible agency shall distribute the portion of funds made available under Section 112(a)(1) to carry out this section to local educational agencies within the state....” *Id.* One exception provides for funds to be allocated to educational service agencies or area career and technical education schools:

Each eligible agency shall distribute the portion of funds made available under section 112(a)(1) for any fiscal year by such eligible agency for career and technical education activities at the secondary level under this section to the appropriate area career and technical education school or educational service agency in any case in which the area career and technical education school or educational service agency, and the local educational agency concerned (A) have formed or will form a consortium for the purpose of receiving funds under this section; or (B) have entered into or will enter into a cooperative arrangement for such purpose.

Perkins Act § 131(e)(1). When an ESA meets these requirements, then the amount that would be distributed to the LEA under the Perkins Act will be allocated between the ESA, the LEA, and the area career and technical education school, according to each entity’s relative share of students who are attending career and technical education programs. The determination of relative share should be based, if practicable, on average enrollment for the preceding three years. Perkins Act § 131(e)(2). In addition, it is possible that ESAs may actually be the LEA in such scenarios.

Section 132(a) provides in part that each eligible agency shall distribute the portion of the funds made available under Section 112(a)(1) to carry out this section for any fiscal year to eligible institutions or consortia of eligible institutions within the State.

*Id.* ESAs are included in the definition of eligible institutions that may receive money under the Act.

Funds distributed under Sections 131 and 132 must be used to carry out activities that improve career and technical education programs pursuant to Section 135. In order to apply for funds under Sections 131 and 132, eligible recipients and eligible institutions must submit a Local Plan to the eligible state agency that meets the requirements outlined in Section 134. Amongst other things, the Plan must outline the programs to be to be offered, describe how the programs will meet state and local performance targets, address professional development, and discuss monitoring and evaluation. Perkins Act § 134(b).

#### *D. ESA Eligibility for Section 203*

The Tech Prep Program discussed in Title II of the Perkins Act has its own funding stream, authorized under section 201. Section 203(a)(1) permits the eligible state agency to award grants to “consortia between or among (A) a local educational agency, an intermediate educational agency, 5/ educational service agency, or area career and technical education school, serving secondary school students, or a secondary school funded by the Bureau of Indian Affairs; and (B) a nonprofit institution of higher education” that offers a two-year associate degree program or two-year certificate program and is a qualified institution of higher education or offers a two-year apprenticeship program that follows secondary education instruction. *Id.* ESAs interested in carrying out Tech Prep programs that combine secondary education, with either postsecondary education or apprenticeships can apply for grants under this section. The Perkins Act outlines several requirements for Tech Prep programs. Perkins Act § 203(c). They must build student confidence in technical skills and core academic subjects; lead to technical skill proficiency, an industry-recognized credential, a certificate, or a degree in a specific career; and lead to job placement.

## **VI. Conclusion**

ESAs qualify as eligible institutions and eligible recipients under the Perkins Act, both in their capacity as educational service agencies and as LEAs. Therefore, they may qualify for grants under several provisions of the Act, including the sections on state leadership activities, local provisions for secondary and postsecondary programs, and funding for Tech Prep programs.

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5/ The definition of “educational service agency” is generally understood to include “intermediate educational agencies.” *See supra* text accompanying note 2.