

TEXAS WORKFORCE COMMISSION LETTER

ID/No: WD 36-05

Date: June 13, 2005

Keyword: Fiscal Admin

To: Local Workforce Development Board Executive Directors
Commission Executive Staff
Integrated Service Area Managers

Through: Luis M. Macias, Director, Workforce Development Division

From: Randy Townsend, Chief Financial Officer

Subject: **Payment of Royalties on Intellectual Property Created with Federal Grant Funds**

PURPOSE:

To provide Local Workforce Development Boards (Boards) with information regarding the payment of royalties on intellectual property created using federal grant funds.

REFERENCE:

Uniform administrative requirements for grants and cooperative agreements to state and local governments (29 C.F.R. Part 97)
United States Department of Labor Training and Employment Guidance Letter No. 31-04, issued April 29, 2005, and entitled "Payment of Royalties on Intellectual Property Created with Federal Grant Funds"

FLEXIBILITY RATINGS:

No Local Flexibility (NLF): This rating indicates that Boards must comply with the federal and state laws, rules, policies, and required procedures set forth in this WD Letter and have no local flexibility in determining whether and/or how to comply. Federal and state laws, rules, policies, and required procedures with a "No Local Flexibility" rating are indicated by the acronym, **NLF**, in the margin to the right of the applicable paragraph. Additionally, all information with a "No Local Flexibility" rating is indicated by "must" or "shall."

Failure to comply with the federal and state laws, rules, policies, and required procedures with a "No Local Flexibility" rating may result in corrective action, up to and including sanction and penalty.

Local Flexibility (LF): This rating indicates that Boards have local flexibility in determining whether and/or how to implement guidance or recommended practices set forth in this WD Letter. All guidance or recommended practices with a "Local Flexibility" rating are indicated by the acronym, **LF**, located in the margin to the right of the applicable paragraph. Additionally, guidance or recommended practices with a "Local Flexibility" rating are indicated by "may" or "recommend."

Boards are not subject to corrective action for failure to comply with guidance or recommended practices with a "Local Flexibility" rating.

BACKGROUND:

On April 29, 2005, the United States Department of Labor Employment and Training Administration (DOL-ETA) issued Training and Employment Guidance Letter (TEGL) 31-04 (http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2073), which provides general principles on the payment of royalties on intellectual property created using federal grant funds.

The information included in TEGL 31-04 elaborates on the administrative requirements and principles set forth in 29 C.F.R. Part 97 and Office of Management & Budget (OMB) Circular A-87. TEGL 31-04 is included as Attachment 1 to this WD Letter.

PROCEDURES:

Boards must comply with TEGL 31-04. In accordance with TEGL 31-04, Boards must not use federal funds to pay royalty fees for any product developed with federal funds unless the federal government waives its rights to the product. No DOL grant is currently known to waive this right. **NLF**

If the vendor develops a product (i.e., original works of authorship, which include computer software, printed literature, sound recordings, visual works, or other original works of creativity) with federal funds and refuses to provide the product without the payment of royalties, Boards may request a free copy of the product from the federal government, or the state for which the product was developed if that state holds copyright or licensing rights. **LF**

Boards must be aware that the limitation for using federal funds to pay royalties does not extend to other costs related to the acquisition of the product. For example, the costs related to the acquisition of the product could include: **NLF**

- delivery shipping costs; or
- costs for a service tied to the operation of the product, such as maintenance fees.

For grant programs in general, such costs are allowable to the extent they are necessary, reasonable, and benefit the particular grant.

ACTIONS REQUIRED:

Boards must ensure that appropriate staff is apprised of and complies with the requirements in this WD Letter.

INQUIRIES:

Direct inquiries to Kimberly R. Emmerich, Director of Financial Operations, at (512) 936-3054 or Fiscal.TA@twc.state.tx.us.

ATTACHMENT:

Attachment 1: Training and Employment Guidance Letter No. 31-04

Rescissions: None	Expiration: Continuing
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