



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington, D.C. 20240

IN REPLY REFER TO:

DIRECTOR'S ORDER NO: 168

Subject: Program Income from Federal Assistance Grants

Sec. 1 What is the purpose of this Order? This Order provides guidance on what constitutes program income and how a State fish and wildlife agency must calculate and use program income generated by Federal Assistance grants funded under the Wildlife and Sport Fish Restoration Programs.

Sec. 2 To whom does this Order apply? This Order applies to all Service personnel who administer grants funded through the Wildlife and Sport Fish Restoration Programs.

Sec. 3 What are the authorities for taking this action?

- a. 16 U.S.C. 777.
- b. 16 U.S.C. 669.
- c. 43 CFR 12.65.
- d. 50 CFR 80.14(c).

Sec. 4 What is the definition of program income? Program income is defined in 43 CFR 12.65(b) as "...gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. "During the grant period" is the time between the effective date of the award and the ending date of the award reflected in the final financial report." To be considered program income, the income must be received by the grantee or a subgrantee. Income not received by a State or subgrantee is not subject to Federal oversight. Exhibit 1 provides a partial list of what may be considered program income. The list is intended to help prompt discussion during the development of the grant agreement.

Sec. 5 Are activities that produce program income allowable under Federal Assistance grants? Yes, if the income producing activities are incidental to the accomplishment of approved grant purposes.

Sec. 6 Should "net" or "gross" income be used when calculating program income? 43 CFR 12.65(b) defines program income as "gross" income. However, 43 CFR 12.65(c) provides that "If authorized by Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income." Therefore, States may include a provision in the grant agreement that allows program income to be reduced by an amount equal to costs incident to the generation of the program income. The grant agreement should identify these costs. Exhibit 2 provides some examples of costs that may be deducted and costs that may not be deducted from gross income when calculating program income. As with Exhibit 1,



Exhibit 2 is included to help prompt discussion during the development of the grant agreement. Failure to specify in the grant agreement how program income will be calculated will result (by default) in the use of “gross” income as equal to program income.

Sec. 7 How may the State use program income? 43 CFR 12.65(g) identifies three methods (deduction, addition, and cost sharing or matching) for applying program income to Federal and non-Federal outlays. All three methods are acceptable. However, if the State fish and wildlife agency wishes to use any method other than deduction, it must identify the method in the grant agreement.

a. If a State fish and wildlife agency wishes to use the deduction or addition methods, the Service will authorize such use.

b. If a State fish and wildlife agency wants to use the cost sharing method of applying program income to the outlays, the Service must review the reasoning provided by the State and make the final decision based on a variety of factors related to the intent of the Wildlife and Sport Fish Restoration Programs. Examples of acceptable factors might include situations where program income is incidental to the accomplishments of the approved purposes of the grant, and would:

(1) Allow the State share of funds to be used on additional fish or wildlife related projects that otherwise could not be sufficiently funded;

(2) Allow State’s Federal Assistance funds saved by using this method to be targeted for additional qualified Program activities; or

(3) Result in a net benefit to the Program.

Sec. 8 What may a State do with program income if it exceeds the amount that can be applied to the grant from which it was earned? If more program income is generated by the grantee during the grant period than can be deducted, added, or applied to meeting cost sharing requirements, then that excess program income balance may be applied, as appropriate, to a subsequent grant that has purposes consistent with the grant that generated the excess program income.

Sec. 9 How is income generated outside the grant period handled? Grant agreements must contain specific language that income generated by the grantee outside of the grant period from Federal Assistance supported acquisitions or other activities will either be (1) treated as license revenue and used to support the administration of the State fish and wildlife agency, or, (2) if the State so requests, used as additional funding for purposes consistent with the grant or the Program that generated the income. For existing grant agreements (both open and closed) that do not contain specific language regarding the disposition of income outside the grant period, income generated by the grantee outside of the grant period is to be treated as if it were license revenue. Lacking specific language requested by the grantee in the grant agreement, there are no requirements to account for income generated by a subgrantee outside of the grant period unless provided for by the grantee in the award to the subgrantee. However, the grantee and subgrantee may enter into subsequent contractual agreements that require accounting of income generated outside the grant period in order to comply with separate obligations (e.g., maintenance of a facility during its useful life, oversight of allowable commercial activities, etc.).

Sec. 10 What is the effective date of this Order? This Order is effective immediately. We will include the contents of this Order in Part 522 of the Fish and Wildlife Service Manual. This Order will expire on March 31, 2005, unless amended, superseded, or revoked.

A handwritten signature in black ink, appearing to read "Steve Williams". The signature is written in a cursive, flowing style.

DIRECTOR

Date: March 11, 2004