

RWHAP Parts C and D Frequently Asked Questions
April 2016
Division of Community HIV/AIDS Programs
Program Income/Maintenance of Effort

The following are responses to frequently asked questions (FAQs) presented by the Health Resources and Services Administration's (HRSA's) HIV /AIDS Bureau (HAB) Division of Community HIV/AIDS Programs (DCHAP). These FAQs are applicable to program income generated by Ryan White HIV/AIDS Program (RWHAP) Parts C and D grants and cooperative agreements that support HIV care and treatment services and related activities and the Part C Maintenance of Effort (MOE) requirements.

Recipients should also review all Policy Clarification Notices (PCNs) at <http://hab.hrsa.gov/manageyourgrant/policiesletters.html>; in particular, [PCN 15-03, Clarifications Regarding the Ryan White HIV/AIDS Program and Program Income](#) and [Frequently Asked Questions for Policy Clarification Notices 15-03 and 15-04](#). Specific questions pertaining to the application of the PCN 15-03 and the related FAQ should be addressed to the HAB Project Officer. This document is intended to provide additional context related to common questions asked by Parts C and D grant recipients. These FAQs may be updated as additional questions are received.

Program Income from 340B Drug Pricing Program

1. Should 340B Drug Pricing Program (340B) revenue be reported as program income?

Yes, all 340B generated revenue is considered program income and should be reported as such. 340B generated revenue is the difference between the third party reimbursement (to the extent this amount exceeds the 340B purchase price) and the 340B purchase price paid. When the RWHAP grant is the sole Federal award that makes an organization eligible as a 340B Drug Pricing Program covered entity, and purchases pharmaceuticals via 340B pricing, all the program income should be attributed to the RWHAP grant. When an entity is 340B eligible and purchases pharmaceuticals via 340B pricing under multiple Federal awards, the recipient must use a reasonable allocation method for the attribution of costs and program income, and be able to document the methodology used. Applicable 340B revenue generated at the recipient level should be reported to HRSA on the Federal Financial Report.

2. Please clarify the audit requirements on 340B income.

Any Part C or Part D grant recipient that expends \$750,000 or more in Federal funds from all sources during their fiscal year is subject to the single audit requirements outlined in 45 CFR 75 Subpart F. In addition, HRSA and drug manufacturers have the authority to audit covered entities for compliance with 340B Drug Pricing Program requirements (42 USC 256b(a)(5)(C)).

3. I am interested in more information regarding 340B drug discount as program income. The difference between RWHAP Part B drug discount and Part C discount is not clear.

The 340B discounted price is the same for any covered entity; there is no difference between the 340B drug discount for RWHAP Parts B and C. The RWHAP Part B AIDS Drug Assistance Programs (ADAPs) may, however, use a rebate model for purchasing in which ADAPs submit claims to pharmaceutical manufacturers for rebates on medications that were not purchased at the 340B prices. Only ADAPs are eligible for 340B rebates. Please review the information provided in PCN 15-03, the accompanying FAQs, and this document.

4. Can 340B program income be used for building new facilities?

No. Construction is an unallowable expense under the RWHAP, including Part C and Part D. Consequently, program income may not be used for construction.

5. The 340B discount is expressly excluded as income under 42 CFR § 75.2. Program income is specifically defined under federal regulation to exclude discounts. If program income includes the difference between the discounted price and the sale prices, it seems that you have included the discount in program income.

No; as noted in PCN 15-03, the discount itself is not considered program income. Purchasing 340B pharmaceuticals at the discounted price in itself does not generate program income. Program income is generated when the recipient charges third party entities a price greater than the discounted purchase price. This revenue (the difference between the third party reimbursement and the discounted 340B purchase price) is program income.

6. When was 340B revenue determined to be Program Income and what is the source of this requirement? Is program income to be reported for the budget period (FFR) applicable to awards issued in 2015 or starting in 2016?

The definition of program income and the related requirements have been in effect since the inception of the RWHAP.

Again, program income is generated when the recipient charges third party entities a price greater than the discounted purchase price. This revenue (the difference between the third party reimbursement and the discounted 340B purchase price) is program income. This meets the longstanding definition of program income (gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award). See 45 CFR § 75.2 (formerly 45 CFR § 74.2) for the definition of program income. Also see related requirements at 45 CFR § 75.305(b)(5), 307 and 407.

Program income should be reported for the budget period in which it was received.

Spending, Tracking, and Reporting Program Income

7. We did not know that we needed to spend program income first before spending our RWHAP Federal award. How do we do that in our system and also spend the Federal award within the project/budget period?

Spending program income before spending the RWHAP Federal award is not a new requirement. Per 45 CFR § 75.305(b)(5), "...to the extent available, recipients and subrecipients must disburse funds available from program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments."

Although projected program income is not reported as part of the application for RWHAP funding, HRSA's expectation is that program income projections will be incorporated into the recipient's planning for services based on the comprehensive HIV care and treatment needs of the recipient's service area. This should be done to effectively determine the allocation and utilization of RWHAP funds during the current period of performance.

RWHAP recipients should develop a reasonable and transparent process for budgeting for and expending federal funds and related program income that balances both the program requirements for programmatic reporting and fiscal requirements for expending the funds. Recipients must proactively project the extent to which program income will be received, and budget accordingly.

As a reminder, program income may be obligated for major contracts issued within the project period. As noted in 45 CFR Part § 75.2, "expenditures" means charges made by the recipient to the RWHAP award. For recipients on an accrual basis of accounting, the expenditure is recognized at the time the cost is incurred (when the contract is awarded). If program income is obligated for a contract awarded during the project period, the expenditure has been recognized (program income has been spent). Neither the contract's period of performance nor when the funds are actually paid (liquidated) is a factor.

8. Is obligating program income sufficient to be able to access grant funds?

We encourage RWHAP Part C recipients to develop a reasonable and transparent process for budgeting for and expending federal funds and any program income which balances both the program requirements for programmatic reporting and fiscal requirements for expending the funds. Our recommendations are that the recipient should develop a budget and expenditure plan that incorporates all available funds, including the federal funds and the program income funds. We expect recipients to proactively project the extent to which program income will be received, and budget accordingly.

Utilizing the budgets, the program must, to the extent possible, disburse funds available from all sources, including program income. Program income funds should be obligated for major contracts issued within the project period. As noted in 45 CFR Part § 75.2, “expenditures” means charges made by the recipient to the RWHAP award. For recipients on an accrual basis of accounting, the expenditure is recognized at the time the cost is incurred (when the contract is awarded). If program income funds are obligated for a contract awarded during the project period, the expenditure has been recognized (program income funds have been spent). Neither the contract’s period of performance nor when the funds are actually paid (liquidated) is a factor. So long as the program income is obligated prior to requesting additional grant funds, the recipient is in compliance with 45 CFR 75.305(b)(5).

9. If we spend program income first and don’t spend all (or any) of the grant award, what does that mean for the next award – will we get an award at all or will it be reduced?

If the recipient is appropriately complying with 45 CFR 75.305(b)(5), and disbursing funds available from program income prior to requesting additional grant funds, this may result in an inability to obligate the full grant award. As is the usual case whenever a Part C grant recipient has an unobligated balance, the recipient must seek prior approval for the use of the unobligated balance (via a carryover request). Such carryover request needs to include a justification for the use of the funds that takes into account the next grant award and any anticipated program income. Again, using traditional grants practice, the Project Officer and Grants Management Specialist will review the carryover request, make a determination, and provide a response to the recipient that indicates whether the request is approved, and if so, in what amount. Any approved carryover will be available to the grant recipient in addition to the next year’s grant award. If the carryover request is denied, in whole or in part, the unobligated funds are either recouped from the grant recipient and returned to the Treasury, or more commonly used to offset the next year’s grant award. However, an unobligated balance, whether approved for carryover or not, does not affect any recipient’s eligibility for the next year’s funding.

10. Are we required to track program income from RWHAP Part C separate from Part D?

Yes. Source and use of program income must be tracked and reported separately. Recipients and subrecipients should adhere to their written accounting procedures that must be compliant with 45 CFR § 75.302(b). Of particular note, recipient and subrecipient financial management systems must provide the following:

- Identification, in its accounts, of all Federal awards received and expended and the Federal programs under which they were received. Federal program and Federal award identification must include, as applicable, the CFDA title and number, Federal award identification number and year, name of the HHS awarding agency, and name of the pass-through entity, if any.
- Records that identify adequately the source and application of funds for

federally-funded activities. These records must contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, expenditures, income and interest and be supported by source documentation.

11. Should the reported program income be proportional to the level a RWHAP provider is paid through the grant (e.g., 25% of a nurse's salary is included in Part C; do we count all program income or just 25% of the program income generated)?

Program income is attributable to a program, not to an individual that may be involved in generating it. When an entity is 340B eligible and purchases pharmaceuticals via 340B pricing under multiple Federal awards, the recipient must use a reasonable allocation method for the attribution of costs and program income, and be able to document the methodology used. Applicable 340B revenue generated at the recipient level should be reported to HRSA on the Federal Financial Report.

12. What if line 10.o. on the FFR is a negative number?

On the Federal Financial Report, line 10. l. should reflect total program income generated by the Part C (or Part D) grant; line 10. n. should reflect the total amount of program income reported in line 10.l. that has been spent. If the entry on line 10.o. is a negative number, this would mean that the recipient is under reporting total program income earned on line 10.l. or reporting expenditures that were not related to earned program income on line 10.n.

13. Should the FFR only report program income from RWHAP Part C clients? What if we have A and F funding?

The FFR for the RWHAP Part C grant should only report program income generated from Part C funded clients. Program income generated by clients funded through other RWHAP Parts should be reported on the appropriate financial report applicable to those funding streams.

14. If we only report recipient program income on the FFR, where do we report subrecipient program income?

Program income earned at the subrecipient level is not formally reported to HRSA. Recipients are required to monitor and track program income earned by subrecipients and to ensure that subrecipients are using program income earned for the purposes and under the conditions of the award. Recipients should require financial and performance reports necessary to ensure that the subaward, and any income generated by it, is used for authorized purposes, in compliance with Federal statutes, regulations and the terms and conditions of the award.

Allowable Uses of Program Income

15. The NHAS 2020 promotes PrEP as an important tool for preventing new HIV infections. Why is the use of RWHAP funds for PrEP limited?

RWHAP funds cannot pay for PrEP medications or the related medical services as the person using PrEP is not HIV infected and therefore not eligible for RWHAP-funded medication. RWHAP Part C and D recipients *may* provide prevention counseling and information to eligible clients' partners. (Also see the [December 2, 2010 Pre-Exposure Prophylaxis program letter](#).)

16. While it is clear that medications cannot be covered, are there components of a PrEP program that are allowable?

Section 2667 of the PHS Act provides further clarification on the elements of a counseling program carried out under Part C. These programs:

- Shall not be designed to promote or encourage, directly, intravenous drug abuse or sexual activity, homosexual or heterosexual;
- Shall be designed to reduce exposure to and transmission of HIV/AIDS by providing accurate information;
- Shall provide information on the health risks of promiscuous sexual activity and intravenous drug abuse; and
- Shall provide information on the transmission and prevention of hepatitis A, B, and C, including education about the availability of hepatitis A and B vaccines and assisting patients in identifying vaccination sites.

To the extent that a PrEP program provides counseling, particularly related to health education and risk reduction, such elements are allowable costs under the Part C program, and thus may be funded by program income.

17. We have been generating and using program income for certain purposes, such as PrEP and construction; may we continue to use program income for these purposes in any way?

Counseling is included as an early intervention service (EIS) under section 2651(e) of the Public Health Service (PHS) Act. The parameters of counseling are further defined in section 2662 of the PHS Act, and include counseling of individuals with negative test results, by "providing information including measures for prevention of, exposure to, and transmission of HIV/AIDS, hepatitis B, hepatitis C, and other sexually transmitted diseases." EIS is a core medical service under Parts A, B and C of the RWHAP, and counseling could be considered a part of "family-centered care" under Part D.

Consequently, to the extent that a Part C grant recipient includes as part of its pre-exposure prophylaxis (PrEP) program counseling and provision of information on prevention of, exposure to, and transmission of HIV/AIDS, such costs are allowable

under the RWHAP, and are therefore additionally allowable expenditures of program income. However, provision of therapeutic treatment medications under PrEP remains an unallowable cost under the RWHAP (as only those who have a diagnosis of HIV may receive medical treatment under the RWHAP), and is therefore not permitted to be funded by program income. Similarly, those costs that are expressly articulated by statute as being unallowable, including construction and cash payments to intended recipients of services, may not be funded by program income.

Construction is an unallowable expense under the RWHAP; consequently, program income may not be used for construction.

18. Historically, we have only been required to use program income to further RWHAP objectives; to limit our expenditures to Part C specific grant spending is new.

Program income must be used to further the goals and objectives of the RWHAP Part C award. It is to be used for the purposes and under the conditions under the award (in other words, for otherwise allowable costs). It may be used for any allowable core medical or support service (see PCN 10-02 and PCN 16-02), administrative expenses, planning, evaluation, and/or clinical quality management activities that are part of a comprehensive system of care for low-income individuals living with HIV.

Program income may also be utilized for elements of the program that are otherwise limited by statutory provisions, such as administrative and clinical quality management activities that might exceed statutory caps, or unique services that are needed to maintain a comprehensive program approach but that would still be considered allowable under the award.

19. Can you use program income in a service area not covered under an RWHAP Part C award?

Program income must be used for the purposes and under the conditions of the Federal award; therefore it cannot be used to cover costs outside of the designated service area.

20. Do the administrative cost caps and other budget limitations apply to program income expenditures?

Program income may be used to support activities in excess of a cap that is imposed directly by the RWHAP, if such costs are otherwise allowable. Program income may be used for administrative costs in excess of the RWHAP Parts A-D administrative costs cap of 10 percent (10%) cap. Program income cannot be used to cover indirect costs in excess of the negotiated rate. However, program income may not be used for wages in excess of the salary rate limitation as such costs are unallowable.

21. We fundraise for an emergency fund. Is this program income and reportable?

No. Fundraising is not an allowable expense under the award (see 45 CFR § 75.442). Since grant funds may not be used for fundraising activities, contributions raised through such activities would not be considered program income.

22. Are we allowed to maintain a reasonable cash reserve that would include program income?

Allocating funds to a general cash reserve fund is unallowable under the Part C award (see 45 CFR §75.433(c)). Consequently, program income may not be used for such purposes.

Maintenance of Effort (applicable to Part C recipients only)

1. Are we only required to track MOE for EIS?

Yes. The maintenance of effort requirement applies to Part C early intervention services only. See section 2664(d) of the Public Health Service Act.

2. Is program income considered as federal or non-federal funds for the MOE calculation?

Recipients are not prohibited from considering program income with regard to MOE, but HAB urges strongly that recipients use caution if they choose to do so, due to potential fluctuation in program income. Under RWHAP MOE provisions, the recipient is required to maintain its financial contribution to the program at not less than its contribution for the fiscal year prior to the application deadline. In addition to prior year non-Federal expenditures, the recipient may choose to include program income generated under the RWHAP award when calculating the aggregate baseline level of effort to be maintained. Also, elements chosen to be included in an MOE calculation must be consistent year-to-year; thus, it is important to remember that doing so may significantly increase the maintenance of effort level from year-to-year. Program income may not be used to offset or reduce the recipient's non-Federal contributions to the RWHAP in compliance with an MOE requirement.

3. Do our subrecipients have maintenance of effort requirements?

No. Subrecipients are not subject to maintenance of effort requirements.