



# United States Department of the Interior



FISH AND WILDLIFE SERVICE  
Washington, D.C. 20240

In Reply Refer To:  
FWS/AWSR/AIM/058368

SEP 18 2014

To: State Fish and Wildlife Agencies  
Secretary, Department of Natural Resources  
of the Commonwealth of Puerto Rico  
Governor of Guam  
Governor of U.S. Virgin Islands  
Governor of American Samoa  
Governor of Commonwealth of the Northern Mariana Islands  
Mayor of the District of Columbia

The purpose of this letter is to provide guidance to States for required use and disposition of income generated by a grant-supported activity or earned only because of the grant awarded by the U.S. Fish and Wildlife Service (Service) during the grant period. We are not changing any requirements with this letter, but rather summarizing existing guidance and resources to assist you in the proper disposition of program income.

The Office of the Inspector General (OIG) during its regular audits of Wildlife and Sport Fish Restoration Program (WSFR) grants identified the improper use and disposition of program income by several state fish and wildlife agencies. The attached Program Income Banking Guidance and FAQ (Enclosure) addresses questions on the required use and disposition of program income and provides guidance on the disposition of program income that some states have banked. The document will be stored and available for use by States and WSFR personnel in the Financial Assistance Wiki <http://fawiki.fws.gov/>.

Please contact your regional WSFR office for assistance in implementing these existing program income requirements. We look forward to helping you successfully implement this guidance.

Sincerely,

*Hannibal Bolton*  
Assistant Director, Wildlife and Sport Fish Restoration

Enclosure

## Program Income Banking Guidance and FAQs

### 1. What is program income?

“Program Income means gross income received by the grantee or subgrantee directly generated by a grant-supported activity, or earned only because of the grant award 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.” (43 CFR 12.65(b)). This guidance on program income banking applies specifically to the federal share of program income.

### 2. What is program income banking?

Program income is “banked” when a State (grantee) does not spend program income prior to drawing additional funds from the same financial assistance grant program or delays applying it to another grant in the same grant program.

### 3. May a State bank program income?

No. 43 CFR 12.61(f)(2) requires program income to be spent prior to requesting additional payments.

### 4. What authorities are applicable to this guidance on program income banking for WSFR programs?

Excerpts of the applicable guidance are in Appendix 1 of this document.

- *43 CFR Part 12 Subpart C - Administrative and Audit Requirement and Cost Principles for Assistance Programs 12.46(c) Exceptions, 12.61 Payment and 12.65 Program Income*
- *50 CFR Part 80 - Administrative Requirements, Pittman-Robertson Wildlife Restoration and Dingell-Johnson Sport Fish Restoration Acts 80.123, 80.124, 80.125, and 80.126*

### 5. Does 50 CFR 80.124 give WSFR the flexibility to offer program income banking to States?

No. While 50 CFR 80 allows a State with unexpended program income on its final Federal financial report to use such income under a subsequent grant, nothing in this provision preempts the requirement under 43 CFR 12.61(f)(2), that such program income be expended before requesting additional payments.

**6. If program income is not a Federal payment or a drawdown of grant funds, does the Cash Management Improvement Act (CMIA) apply?**

Possibly. The Federal share of program income earned is Federal funds. Advanced federal payments are payments (drawdowns) a State receives when a State does not properly use the program income to offset requested payments (drawdowns). The CMIA requires States to minimize the period between the receipt of Federal funds and the payment out for expenditures. Retaining Federal funds beyond a minimal period may require a State to pay interest to the Federal agency. (See *31 CFR Part 205 - Rules and Procedures for Efficient Federal-State Funds Transfers; Final Rule (Cash Management Improvement Act)*).

**7. Does creating a grant and designating the undisbursed program income as the funding source resolve the program income banking issue?**

No. 50 CFR 80.124 does allow a State to establish a grant funded with the undisbursed program income. However, 43 CFR 12.61(f)(2) requires that a State apply all available program income to any project under the program before the State draws down any additional Federal funds under the program. If the State is continuing to draw down funds under the program, creating a grant and designating the undisbursed program income as the future funding source is not in compliance with 43 CFR 12.61(f)(2). Obligating the program income funds for a subsequent grant is not in itself considered a liquidation of the Federal funds.

It is acceptable if the State creates a grant using undisbursed program income and spends the program income funds before drawing down any new Federal funds under the program.

**8. How will WSFR handle program income funded grants in the future?**

Program income earned on a grant must be spent within the grant period it was earned prior to making requests for payments. If a grant closes with undisbursed program income, the State and the WSFR Regional Office must agree to a method that complies with 50 CFR 80.124, 43 CFR 12, and the CMIA, to expend such funds as soon as possible.

**9. If a State currently has banked program income, how can the State dispose of it?**

The WSFR Regional Office and affected State must agree in writing (i.e. grant award letter) to a method that spends all banked program income within the applicable periods:

AMOUNT OF BANKED PROGRAM INCOME	FINAL DATE TO SPEND
≤ \$ 500,000	January 31, 2015
\$ 500,001 – \$ 999,999	June 30, 2015
≥ \$1,000,000	June 30, 2016

**10. May a State use the cost share method for disposal of the banked program income?**

The use of cost share program income disposal method must have been approved in the original award letter.

**11. A portion of our undisbursed program income is income we received after the grant period ended. In the original grant, we stipulated that the income would be treated as program income rather than license revenue. Can that decision be reversed?**

Yes. For the purposes of "Program Income Banking", any income received after the close of a grant and is not a result of activities supported by a subsequent grant is not "Program Income" (43 CFR 12.65(b)). A State must fully substantiate through its financial, grant, and other records to its WSFR Regional Office the reclassification of "Program Income" to "Income Received After Grant Period." WSFR will consider such funds a portion of the State's license revenue (50 CFR 80.125). A State must submit revised SF-425 forms and any other documentation as may be reasonably requested by its WSFR Regional Office.

**12. What will happen if a State fails or neglects to spend all of the banked program income as was mutually agreed to with WSFR in the grant award letter?**

If a State has violated the provisions of 43 CFR Part 12, and demonstrates an unwillingness or inability to comply with this policy for corrective action, then the FWS may withhold all further payments (drawdowns) to a State under the grant program until the State expends the entire amount of banked program income.

## APPENDIX 1 - Excerpts from Applicable Guidance on Banked Program Income

*43 CFR Part 12 Subpart C - Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*

### **§12.61 Payment.**

*(f) Effect of program income, refunds, and audit recoveries on payment.*

(2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

### **§12.65 Program income.**

*g) Use of program income.* Program income shall be deducted from outlays which may be both Federal and non-Federal as described below, unless the Federal agency regulations or the grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income. When Federal agencies authorize the alternatives in paragraphs (g) (2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays.

*50 CFR 80 - Administrative Requirements, Pittman-Robertson Wildlife Restoration and Dingell-Johnson Sport Fish Restoration Acts*

### **§80.124 How may an agency use unexpended program income?**

If a State fish and wildlife agency has unexpended program income on its final Federal financial report, it may use the income under a subsequent grant for any activity eligible for funding in the grant program that generated the income.

### **§80.125 How must an agency treat income that it earns after the grant period?**

(a) The State fish and wildlife agency must treat program income that it earns after the grant period as either:

(1) License revenue for the administration of the agency; or

(2) Additional funding for purposes consistent with the grant or the program.

(b) The agency must indicate its choice of one of the alternatives in paragraph (a) of this section in the project statement that the agency submits with each application for Federal assistance. If the agency does not record its choice in the project statement, the agency must treat the income earned after the grant period as license revenue.

**§ 80.126 How must an agency treat income earned by a subgrantee after the grant period?**

(a) The State fish and wildlife agency must treat income earned by a subgrantee after the grant period as:

- (1) License revenue for the administration of the agency;
- (2) Additional funding for purposes consistent with the grant or the program; or
- (3) Income subject only to the terms of the subgrant agreement and any subsequent contractual agreements between the agency and the subgrantee.

(b) The agency must indicate its choice of one of the above alternatives in the project statement that it submits with each application for Federal assistance. If the agency does not indicate its choice in the project statement, the subgrantee does not have to account for any income that it earns after the grant period unless required to do so in the subgrant agreement or in any subsequent contractual agreement.