

**Q. Can MEP funds be used to:**

**(1) Provide food for eligible migrant families as a stopgap measure when other resources are not available?**

**(2) Provide English literacy classes for parents of eligible migrant children in conjunction with their children?**

**(3) Pay the cost of physical examinations and athletic fees for eligible migrant children, as required for participation in school athletics?**

A1. Services such as the provision of food for eligible migrant families should be provided by non-MEP local programs such as a community food bank. If such programs are *not available* however, OME suggests that you use the factors listed below (response to Question 3) to consider the possibility of using MEP funds to provide food for eligible migrant children *only* so long as other programs are not able to provide this service.

A2. MEP funds may not be used to provide instructional or support services for parents of migrant children who are not eligible for the program themselves (i.e., they are not under 22 years old and do not meet the other eligibility criteria for the MEP). These parents might be allowed to attend their child's English literacy classes if it is allowed by the district. Consistent with the rules surrounding the incidental inclusion of non-migrant children in MEP-funded services, the parents' attendance must also not: 1) decrease the amount, duration, or quality of services to migrant children, 2) increase the cost of providing the services, or 3) preclude eligible migrant children from attending the classes. If the MEP foresees multiple parents attending classes or if parents will be attending multiple classes, it becomes difficult to assert that their attendance will not be a burden in terms of cost and will not decrease the amount, duration, or quality of services to migrant children. For this reason, the district and/or MEP may consider the feasibility of providing a family literacy program, per Section 1304(c)(6)(C) of the statute. The provision of such a program will also be dependent on the factors listed below (response to Question 3).

A3. The use of MEP funds for eligible migrant students' physical examinations and athletic fees (as required for participation in school athletics) might be an allowable support service. OME recommends that you consider the following factors in determining whether to pay for physicals and athletic fees with MEP funds:

- What policies does the school district have in place for any student athlete that cannot afford the costs associated with sports participation? Migrant students are entitled to the same benefits that the district provides for all students. If the district does not provide the necessary assistance, then MEP funds might be used to pay for the eligible migrant students.
- Has the possibility of referred services been explored?

Considering the above factors will help ensure the MEP abides by the criteria that all SEAs and LOAs must consider when determining if they can use MEP funds for a particular activity or (instructional or support) service. The criteria are:

- The activity or service comports with the results of the State's Comprehensive Needs Assessment (CNA) and the strategies outlined in the State's Service Delivery Plan (SDP).
- MEP funds are first used to meet the identified needs of migrant children that result from their migrant lifestyle, and to permit these children to participate effectively in school.
- The activity or service meets the needs of migrant children that are not addressed by services available from other Federal or non-Federal programs;
- The MEP funds used to supplement, rather than supplant the use of non-Federal funds.
- The costs of the service or activity must comport with the cost principles described in OMB Circular A-87 (now incorporated into the Code of Federal Regulations (CFR) at 2 CFR, Part 225). The cost principles require, among other things, that costs of the service or activity be reasonable and necessary, and be allocable (or chargeable) to the MEP relative to the benefit received.

Whether an activity is an allowable use of MEP funds is largely dependent on State and local context- specifically, the availability of non-MEP resources and the needs and strategies identified in the State's CNA and SDP. It is quite possible that if these resources do not exist, MEP funds may be used to assist these migrant students.

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#### **Q. Regarding return moves from Mexico:**

**(1) What is an example of the Department's MEP Guidance statement (Chapter II, D32): "...if a worker's move to another country is a 'change of residence,' the worker's move back to a school district in the U.S. might be a qualifying move."?**

**(2) Could a family who moves (a) to visit family for the holiday season, (b) for vacation while the children are out of school, or (c) for other personal reasons (i.e., to visit a sick relative, etc...), ever be considered eligible upon returning?**

**(3) Is there a specific amount of time that a family should be gone in order for the move to constitute a change of residence?**

**(4) Would it be prudent to consider moves to Mexico for reasons (a) through (c) in Question #2 above, qualifying if the family is in Mexico for more than 2- 4 weeks and then they return to the US in search of qualifying work?**

A1. The Department considers a change from one residence to another residence to mean "leaving the place where one currently lives and going to a new place to live, and not just to

visit.” If, for example, a worker moves from Oregon to Mexico because (1) there is a work shortage, (2) he is laid off, or (3) work is slow and workers are encouraged to “take a break”, the worker’s return move “might” qualify. Of course, the recruiter should ask enough questions to be confident that the worker intends to change where he lives for a period of time. The more time that the worker is off, the less likely it is that he simply went to Mexico to visit.

A2. It is only in rare circumstances that a family who moves (a) to visit family for the holiday season, (b) for vacation while the children are out of school, or (c) for other personal reasons (i.e., to visit a sick relative, etc...) would qualify for the MEP. If, for example, a worker and his family moved to Mexico for three months while the children are out of school, then a recruiter might want to question the worker about his work situation. He might say that they went to Mexico to visit family during this time, but after probing further the recruiter learns that the worker lost his job and had no means of income during that time. In this case, the worker’s children might qualify on the return move. But, again, the recruiter should make his decision based on whether the worker changed residences (e.g., turned off utilities, sublet the house, returned to a new home) and whether the move away and the move back occurred due to economic necessity.

A3. OME does not recommend a specific amount of time that a family must be gone in order for the move to constitute a change of residence. The State should make this type of determination based on the types of scenarios it sees in its State or on a case by case basis. For example, a worker might move from Louisiana to Ohio to perform seasonal agricultural work. Upon arriving in Ohio, he learns that the employer has already filled his crew. The worker is not aware of any other work in the area, so he returns to Louisiana five days later. In this situation, the worker changed residences even though he only stayed in Ohio for a short period of time. On the other hand, some families are able to go to Mexico for four weeks over the holiday and they might never consider Mexico to be where they “live”, but rather where they are visiting for the holidays.

A4. This depends on whether the recruiter believes the family changed where they “lived” (i.e., changed residence). It seems unlikely, although not inconceivable, that a family who is gone for 2 weeks (or other short periods of time) actually “lived” in another location rather than just visiting the area. But, certainly there are situations in which a worker and his family might make a short move and the children would qualify. For example, a worker moves to Ohio to harvest tomatoes. After two weeks, the crop is harvested so he returns to his original location. In situations where the worker moved for the reasons described in (a) through (c) above, the recruiter should focus his questions on whether the worker, in fact, moved for the reasons specified, or if he had other reasons not explained at first (e.g., because he lost his job). The recruiter should also check whether the worker returned to a new job, a new home, or if he just resumed an old job. All of these factors might impact the recruiter’s eligibility decision.

In situations where a worker is making a return move, the recruiter should always verify that the worker is returning to temporary or seasonal employment. A worker who returns to the same job is not automatically disqualified, but this is an area in which to exercise caution because the worker might be returning to permanent employment. In addition, the recruiter should always document on the COE the reasons for his eligibility determination, particularly if there are circumstances in which an independent re-interviewer might question whether the move was for economic necessity, the move was a change of residence, the work was temporary or seasonal, etc.

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**Q. Do workers who own their own fishing boats and take their families to another state to fish for a season, qualify for the MEP? The size of the boats range from small 20 foot fishing boats to commercial size fishing boats and some of the boat owners hire workers.**

A. The fact that a worker owns his own boat does not automatically disqualify him as a migratory fisher. In many cases, OME would equate a boat with the mode of transportation a worker uses to travel back and forth to the worksite where he harvests crops. To determine if the worker's children qualify for the MEP, the recruiter should examine if the worker and his children meet the various eligibility criteria. The recruiter should be cautious to examine whether the worker is permanently employed as a fisher or whether his employment is, in fact, temporary or seasonal.

In the past, the MEP has seen incorrect eligibility determinations regarding individuals who own their own boats. These individuals were professionals who went fishing on their own boats for recreational purposes, even though they may have sold some of the product when they returned to port or consumed some of the product. OME does not believe these individuals "moved," as defined in the regulation, to engage in fishing work. The work was not performed for wages or personal subsistence. Moreover, these individuals did not change residence due to economic necessity.

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**Q. If there is not enough space available on the COE for all of the eligible children in a family, should a second COE be completed for the same family?**

A. This depends on how the State has designed its COE. For example, information on four children could be collected on the front side of the COE and a subsequent section on the back of the COE could be used to record additional children's information if the family has more than four children. If the SEA finds that a large number of families travelling to the State have more than four children, it might be worthwhile to add additional child data space to the State's COE. The section on the back should be an officially designated part of the State's COE (i.e., the recruiter should not simply record a child's information on the back if there is not a section for

it). This option would save time for recruiters because they wouldn't have to fully complete a second COE.

If the COE is one-sided (i.e., there are no State-designated sections on the back side), recruiters would need to fully complete a second COE, including collecting a second parent signature. Of course, we recommend linking the two COEs by placing comments in the Comments section of each COE that references the corresponding COE number. We also recommend labeling the COEs as 1 of 2 and 2 of 2 so that anyone who pulls one of the COEs will know immediately to look for a second COE.

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**Q. What are the responsibilities of an LEA for recording time and effort in cases where employees are split-funded? Are employees funded partially with MEP funds and partially with funds consolidated in a schoolwide pool (pool does not include MEP funds) required to record time and effort, and if so, what authority requires this?**

A. In short, employees who are split-funded between the MEP and funds consolidated in a schoolwide pool are required to report time and effort via a personnel activity report or equivalent documentation. This requirement is outlined in Office of Management and Budget Circular A-87, which is incorporated into the Code of Federal Regulations (CFR) at 2 CFR Part 225. The Circular's incorporation into the CFR gives it the weight of Federal law.

*Compensation for personal services* is addressed in Attachment B of the circular, specifically paragraph 8.h.(4). The paragraph reads: "where employees work on multiple activities or cost objectives, a distribution of their salaries or wages will be supported by personnel activity reports or equivalent documentation which meets the standards in subsection (5) unless a statistical sampling system (see subsection (6)) or other substitute system has been approved by the cognizant Federal agency."

Subsection (5) provides standards for personnel activity reports or equivalent documentation and Subsection (6) addresses substitute systems for allocating salaries and wages to Federal awards. Note that any substitute system must be approved by the cognizant Federal agency. To read this requirement in full and learn about the standards for personnel activity reports, visit [http://www.whitehouse.gov/sites/default/files/omb/assets/agencyinformation\\_circulars\\_pdf/a87\\_2004.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/agencyinformation_circulars_pdf/a87_2004.pdf). Scroll to Attachment B: *Selected Items of Cost* and review the section for *Compensation for Personal Services*.

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