

grantees to place all funds that support their AFP grant, including those repaid during the life of the program, in a permanent and separate account (Sec. 303(b)(5)(A)).

The following is a discussion of important issues that an applicant for an AFP grant should consider in developing an application.

(1) *Nature of the Match:* As established in the Fiscal Year 2002 Appropriations bill that supercedes the AT Act's statutory requirement, the State:Federal match requirement ratio is 1:3 (Department of Education Appropriations Act, 2002, Public Law 107-116). Thus, the State match share is 25 percent.

In the past, the biggest hurdle to States submitting a fundable application for an AFP grant has been meeting the requirement in section 303(b)(1) to match the Federal award with cash. NIDRR received comments on this issue urging that "cash" be defined as broadly as possible, including allowing "in-kind" contributions to qualify as a match of the Federal funds. NIDRR has concluded that the statute does not allow for this interpretation. The statutory language is clear: the State matching funds must be cash. Thus, the match cannot be "in-kind" contributions such as personnel costs, rent, equipment or other program supports.

State matching funds must come from State, local or private sources (Sec. 303(b)(1)). State matching funds may not be other Federal or previously obligated State funds, or funds made available by a financial or lending institution for direct loans that are not maintained in the required permanent separate account. The proposed priority includes a provision establishing that applicants must identify the source of their matching funds.

The State matching funds cannot supplant funds that have been used to support AFP mechanisms (e.g., title I or existing title III funds)(Sec. 303(b)(4)). However, a State may use its AFP award to expand an existing AFP.

(2) *Permanence of the Program:* The AFP awards have a 12-month funding period (Sec. 303(b)(2)). However, the project period for an AFP remains in effect for as long as the program originally funded by the AFP award is in operation. NIDRR received comments asking for clarification of the statutory language that refers to the permanence of the AFP. The proposed priority includes a provision that addresses what is meant by a State's obligation to implement its AFP grant on a permanent basis. This obligation goes

well beyond a project's 12-month funding period.

(3) *Responsibilities of the Grantee During the First Budget Period:* During the first 12-month budget period, the statute requires a grantee to submit policies and procedures to NIDRR that will be used to administer the AFP grant (Sec. 305). The proposed AFP priority includes provisions specifying when during the first 12-month budget period these policies and procedures must be submitted to NIDRR. In addition, the proposed AFP priority includes provisions requiring the grantee to undertake two additional statutory activities during the first 12-month budget period: (1) depositing its matching funds and its Federal award funds into a permanent separate account (Sec. 303(b)(5)), and (2) entering into a contract with a community-based organization (CBO), ensuring that the CBO has entered into a contract with commercial lending institutions or organizations or State financing agencies (Sec. 304).

(4) *Closing out an AFP Grant with Funds Remaining:* The proposed AFP priority includes a provision that establishes how much a State must return to NIDRR when it terminates its AFP grant and how to address outstanding loans in that calculation. When the AFP grant ceases, voluntarily or involuntarily, as part of the grant closeout process, the grantee has 90 days after the end of the funding year to return the Federal share of the remaining funds.

(5) *Use and Control of Funds:* One of the assurances that applicants must submit involves the use and control of the AFP grant funds, including funds generated through interest-bearing accounts and investment income (Sec. 303(b)(6)). The proposed AFP priority includes a provision that clarifies that the assurance regarding the use and control of funds applies to all funds derived from the AFP grant including the original Federal award, the State matching funds, AFP funds generated by either interest bearing accounts or investments, and all principal and interest paid by AFP borrowers who are extended loans directly from the permanent separate account.

(6) *Contract with CBO:* Grantees are required to contract with a community-based organization (CBO) to administer the AFP grant (Sec. 304). NIDRR strongly encourages a State to identify this CBO in their application and include a letter of participation from the organization. Further, States are encouraged to take a competitive and inclusive approach to selecting the CBO.

(7) *Indirect Costs:* The statute provides that the percentage of funds made available through the grant that is used for indirect costs may not exceed 10 percent (Sec. 303(b)(7)). The proposed AFP priority includes a provision that requires the grantee to recalculate annually the maximum allowable indirect cost rate, which may not exceed 10 percent of the amount of funds in the permanent and separate account and the amount of loans outstanding from that account.

(8) *Eligibility of Employers:* NIDRR received comments requesting clarification whether employers are eligible to assist individuals with disabilities through an AFP grant. The proposed AFP priority includes language stating that an employer is eligible to serve as an authorized representative of an individual with a disability.

(9) *Responsibilities of Employers under the Americans with Disabilities Act (ADA):* NIDRR received comments on whether an AFP grant affects an employer's responsibility to provide reasonable accommodations to qualified employees with disabilities. An employer's obligations under the ADA are not affected by the existence of an AFP grant, which is a voluntary program for individuals with disabilities. However, there is nothing in the ADA or in the AT Act that would prohibit an individual with a disability from choosing to have an employer serve as an authorized representative to obtain AT on behalf of the employee by using AFP grant support even if the employer already has a responsibility under the ADA to provide the AT. At the same time, an employer may not require an employee to designate the employer as an authorized representative under the AFP grant nor may an employer require an employee to use the AFP grant to purchase AT.

(10) *Personal Grants:* NIDRR received comments inquiring whether an AFP grantee could provide direct financial assistance to qualified individuals for AT. The statutory language of the AFP is unequivocal: AFP funds cannot be used as outright grants to eligible individuals. Individuals who participate in an AFP grant are expected to pay for the purchase of the AT.

### Proposed Priority

The purpose of these proposed requirements is to increase the funding for and provision of AT (Sec. 2(b)(1)(A)). The AFP will: (1) Achieve the program's short-term goal of purchasing AT through alternative financing mechanisms for individuals with disabilities, and other eligible parties;