WIOA NPRM

Notice of Proposed Rulemaking on Title I and Title III programs
(U.S. Dept. of Labor only)

All items in the table of contents are clickable. Please click to jump to a specific section.

Contents

DEPARTMENT OF LABOR 28

SUPPLEMENTAL INFORMATION: 31

Executive Summary 34

I. Acronyms and Abbreviations 38

II. Background 46

2. Workforce Innovation and Opportunity Act Principles 46

III. Section-by-Section Discussion of Proposal 54

A. Part 603 – Federal-State Unemployment Compensation Program 54

A. Part 675 – Introduction to the Regulations for the Workforce Innovation and Opportunity Systems Under Title I of the Workforce Innovation and Opportunity Act 62

B. Part 679 – Statewide and Local Governance of the Workforce Innovation and Opportunity System Under Title I of the Workforce Innovation and Opportunity Act 67

C. Part 680 – Adult and Dislocated Worker Activities Under Title I of the Workforce Innovation and Opportunity Act 131

Introduction 133

Introduction 141

Introduction 145

Introduction 175

Introduction 181

Introduction 191

D. Part 681 – Youth Activities Under Title I of the Workforce Innovation and Opportunity Act 195

E. Part 682 – Statewide Activities Under Title I of the Workforce Innovation and Opportunity Act224

Introduction 238

F. Part 683 – Administrative Provisions Under Title I of the Workforce Innovation and Opportunity Act 249

Introduction 281

G. Part 684 – Indian and Native American Programs Under Title I of the Workforce Innovation and Opportunity Act 299

§ 684.300 Who is eligible to receive services under the Indian and Native American program? 313

H. Part 685 – National Farmworker Jobs Program Under Title I of the Workforce Innovation and Opportunity Act 336

I. Part 686 – The Job Corps Under Title I of the Workforce Innovation and Opportunity Act 359

§ 686.310 How are entities selected to receive funding to operate centers? 370

J. Part 687 – National Dislocated Worker Grants 420

K. Part 688 – Provisions Governing the YouthBuild Program 433

L. Part 651 – General Provisions Governing the Federal-State Employment Service System 467

M. Part 652 – Establishment and Functioning of State Employment Services 487

N. Part 653 – Services of the Employment Service System 513

O. Part 654 – Special Responsibilities of the Employment Service System 529

P. Part 658 – Administrative Provisions Governing the Employment Service System 534

V. Rulemaking Analyses and Notices 539

1. Need for Regulation 542

2. Alternatives in Light of the Required Publication of Proposed Regulations 542

3. Analysis Considerations 546

4. Subject-by-Subject Analysis 557

a. New State Workforce Development Board Membership Requirements 558

b. Development and Continuous Improvement of the Workforce Development System 559

c. Development of Statewide Policies Affecting the State's One-stop System 561

d. Development of Strategies for Technological Improvements 562

e. State Plan Modification 563

f. Identification of Regions 564

g. Appoint New Local Workforce Development Board and Appropriate Firewalls 565

h. Career Pathways Development 566

i. Development of Proven and Promising Practices 567

j. Technology 568

k. Selection of One-stop Operators 568

l. Coordination with Education Providers 569

m. Regional Plans 570

n. Local and Regional Plan Modification 570

o. Improved Information about Potential Training Program Providers 572

p. Sanctions on Under-performing States 573

q. Colocation of Wagner-Peyser Services 575

r. Partners Required to Pay their Share for Proportionate Use of One-stop Delivery System 576

s. Establishing Training Provider Eligibility Procedures, Including Adding Registered Apprenticeship 577

t. Determining Eligibility of New and Previously Eligible Providers 578

u. Biennial Review of Eligibility 579

v. Disseminating the Training Provider List with Accompanying Information 580

w. Migrant and Seasonal Farmworker Housing 580

5. Summary of Analysis 582

List of Subjects 632

PART 603 – FEDERAL-STATE UNEMPLOYMENT COMPENSATION (UC) PROGRAM; CONFIDENTIALITY AND DISCLOSURE OF STATE UC INFORMATION 635

§ 603.2 What definitions apply to this part? 635

§ 603.5 What are the exceptions to the confidentiality requirement? 637

§ 603.6 What disclosures are required by this subpart? 638

PART 675 – INTRODUCTION TO THE REGULATIONS FOR THE WORKFORCE INNOVATION AND OPPORTUNITY SYSTEMS UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT 640

§ 675.100 What are the purposes of title I of the Workforce Innovation and Opportunity 640

§ 675.200 What do the regulations for workforce investment systems under title I of the 642

§ 675.300 What definitions apply to these regulations? 643

PART 679 – STATEWIDE AND LOCAL GOVERNANCE OF THE WORKFORCE INVESTMENT SYSTEM UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT 655

Subpart B—Workforce Innovation and Opportunity Act Local Governance (Workforce Development Areas)..... 656

Subpart C—Local Boards 658

Subpart D—Regional and Local Plan 659

Subpart E—Waivers/WorkFlex (Workforce Flexibility Plan) 660

Subpart A—State Workforce Development Board 661

§ 679.110 What is the State Workforce Development Board? 662

§ 679.120 What is meant by the terms “optimum policy-making authority” and..... 667

§ 679.130 What are the functions of the State Board?..... 667

§ 679.140 How does the State Board meet its requirement to conduct business in an open..... 671

§ 679.150 Under what circumstances may the Governor select an alternative entity in place..... 673

§ 679.160 Under what circumstances may the State Board hire staff? 675

Subpart B—Workforce Innovation and Opportunity Act Local Governance (Workforce Development Areas)..... 676

§ 679.210 What are the requirements for identifying a region?..... 676

§ 679.220 What is the purpose of the local workforce development area?..... 678

§ 679.230 What are the general procedural requirements for designation of local 679

§ 679.240 What are the substantive requirements for designation of local workforce 680

§ 679.250 What are the requirements for initial and subsequent designation of workforce 681

§ 679.260 What do the terms “performed successfully” and “sustained fiscal integrity”..... 683

§ 679.270 What are the special designation provisions for single-area States? 684

§ 679.280 How does the State fulfill the requirement to provide assistance to local areas..... 685

§ 679.290 What right does an entity have to appeal the Governor’s decision rejecting a..... 686

Subpart C—Local Boards 687

§ 679.310 What is the Local Workforce Development Board? 688

§ 679.320 Who are the required members of the Local Workforce Development Board? 690

§ 679.330 Who must chair a Local Board? 693

§ 679.340 What is meant by the terms “optimum policy-making authority” and 694

§ 679.350 What criteria will be used to establish the membership of the Local Board? 695

§ 679.360 What is a standing committee, and what is its relationship to the Local Board? 695

§ 679.370 What are the functions of the Local Board? 696

§ 679.380 How does the Local Board satisfy the consumer choice requirements for career 702

§ 679.390 How does the Local Board meet its requirement to conduct business in an open 703

§ 679.400 Who are the staff to the Local Board and what is their role? 705

§ 679.410 Under what conditions may a Local Board directly be a provider of career 705

§ 679.420 What are the functions of the local fiscal agent? 707

§ 679.430 How do entities performing multiple functions in a local area demonstrate 709

Subpart D—Regional and Local Plan 709

§ 679.510 What are the requirements for regional planning? 710

§ 679.520 What are the requirements for approval of a regional plan? 713

§ 679.530 When must the regional plan be modified? 714

§ 679.540 How are local planning requirements reflected in a regional plan? 714

§ 679.550 What are the requirements for the development of the local plan? 714

§ 679.560 What are the contents of the local plan? 716

§ 679.570 What are the requirements for approval of a local plan? 723

§ 679.580 When must the local plan be modified? 724

Subpart E—Waivers/WorkFlex (Workforce Flexibility Plan) 725

§ 679.610 What provisions of the Workforce Innovation and Opportunity Act and the 726

§ 679.620 Under what conditions may a Governor request, and the Secretary approve, a 728

§ 679.630 Under what conditions may the Governor submit a Workforce Flexibility Plan?.....732

§ 679.640 What limitations apply to the State's Workforce Flexibility Plan authority under.....736

PART 680 – ADULT AND DISLOCATED WORKER ACTIVITIES UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT 737

Subpart B—Training Services 738

Subpart C—Individual Training Accounts.....738

Subpart D—Eligible Training Providers.....739

Subpart E—Priority and Special Populations.....740

Subpart F—Work-Based Training 741

Subpart G—Supportive Services.....742

Subpart A—Delivery of Adult and Dislocated Worker Activities Under Title I of the Workforce Innovation and Opportunity Act 743

§ 680.110 When must adults and dislocated workers be registered and considered a 744

§ 680.120 What are the eligibility criteria for career services for adults in the adult and.....745

§ 680.130 What are the eligibility criteria for career services for dislocated workers in the 746

§ 680.140 What Workforce Innovation and Opportunity Act title I adult and dislocated 747

§ 680.150 What career services must be provided to adults and dislocated workers?.....751

§ 680.160 How are career services delivered?.....751

§ 680.170 What is an internship or work experience for adults and dislocated workers? 752

§ 680.180 What is the individual employment plan?.....752

Subpart B—Training Services 752

§ 680.210 Who may receive training services?.....753

§ 680.220 Are there particular career services an individual must receive before receiving.....754

§ 680.230 What are the requirements for coordination of Workforce Innovation and 755

Subpart C—Individual Training Accounts.....756

§ 680.310 Can the duration and amount of Individual Training Accounts be limited? 757

§ 680.320 Under what circumstances may mechanisms other than Individual Training.....758

§ 680.330 How can Individual Training Accounts, supportive services, and needs-related 761

§ 680.340 What are the requirements for consumer choice? 762

Subpart D—Eligible Training Providers 764

§ 680.410 What entities are eligible providers of training services? 765

§ 680.420 What is a “program of training services”? 766

§ 680.430 Who is responsible for managing the eligible provider process? 767

§ 680.440 What are the transition procedures for Workforce Investment Act-eligible 769

§ 680.450 What is the initial eligibility procedure for new providers? 770

§ 680.460 What is the application procedure for continued eligibility? 772

§ 680.470 What is the procedure for registered apprenticeship programs that seek to be 777

§ 680.480 May an eligible training provider lose its eligibility? 778

§ 680.490 What kind of performance and cost information must eligible training providers 779

§ 680.500 How is the State list of eligible training providers disseminated? 781

§ 680.510 In what ways can a Local Board supplement the information available from the 783

§ 680.520 May individuals choose training providers located outside of the local area? 783

§ 680.530 What requirements apply to providers of on-the-job-training, customized 784

Subpart E—Priority and Special Populations 785

§ 680.610 Does the statutory priority for use of adult funds also apply to dislocated worker 786

§ 680.620 How does the Temporary Assistance for Needy Families program relate to the 786

§ 680.630 How does a displaced homemaker qualify for services under title I? 787

§ 680.640 May an individual with a disability whose family does not meet income eligibility 787

§ 680.650 Do veterans receive priority of service under the Workforce Innovation and 788

§ 680.660 Are separating military service members eligible for dislocated worker activities 789

Subpart F—Work-based Training 789

§ 680.710 What are the requirements for on-the-job training contracts for employed 790

§ 680.720 What conditions govern on-the-job training payments to employers? 791

§ 680.730 Under what conditions may a Governor or Local Board raise the on-the-job.....792

§ 680.740 How can on-the-job training funds be used to support placing participants into a.....793

§ 680.750 Can Individual Training Account and on-the-job training funds be combined to.....793

§ 680.760 What is customized training?.....794

§ 680.770 What are the requirements for customized training for employed workers?.....794

§ 680.780 Who is an "incumbent worker" for purposes of statewide and local employment.....795

§ 680.790 What is incumbent worker training?.....796

§ 680.800 What funds may be used for incumbent worker training?.....796

§ 680.810 What criteria must be taken into account for an employer to be eligible to.....796

§ 680.820 Are there cost sharing requirements for local area incumbent worker training?.....797

§ 680.830 What is a transitional job? 797

§ 680.840 What funds may be used for transitional jobs? 798

§ 680.850 May funds provided to employers for work-based training be used to assist, ...798

Subpart G—Supportive Services.....799

§ 680.910 When may supportive services be provided to participants? 799

§ 680.920 Are there limits on the amounts or duration of funds for supportive services?.....800

§ 680.930 What are needs-related payments?.....800

§ 680.940 What are the eligibility requirements for adults to receive needs-related 801

§ 680.950 What are the eligibility requirements for dislocated workers to receive needs-.....801

§ 680.960 May needs-related payments be paid while a participant is waiting to start 802

§ 680.970 How is the level of needs-related payments determined? 803

PART 681 – YOUTH ACTIVITIES UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT.....803

Subpart B—Eligibility for Youth Services.....804

Subpart C—Youth Program Design, Elements, and Parameters.....805

Subpart D—One-Stop Services to Youth.....807

Subpart A—Standing Youth Committees 809

§ 681.110 Who is included on a standing youth committee? 809

§ 681.120 What does a standing youth committee do? 810

Subpart B—Eligibility for Youth Services 811

§ 681.210 Who is an “out-of-school youth”? 811

§ 681.220 Who is an “in-school youth”? 813

§ 681.230 What does “school” refer to in the “not attending or attending any school” in the 815

§ 681.240 When do local youth programs verify dropout status, particular for youth 815

§ 681.250 Who does the low-income eligibility requirement apply to? 816

§ 681.260 How does the Department define “high poverty area” for the purposes of the 817

§ 681.270 May a local program use eligibility for free or reduced price lunches under the 817

§ 681.280 Is a youth with a disability eligible for youth services under the Act if their 818

§ 681.290 How does the Department define the “basic skills deficient” criterion in this 818

§ 681.300 How does the Department define the “requires additional assistance to complete 819

§ 681.310 Must youth participants enroll to participate in the youth program? 819

Subpart C—Youth Program Design, Elements, and Parameters 820

§ 681.400 What is the process used to select eligible youth providers? 820

§ 681.410 Does the requirement that a State and local area expend at least 75 percent of 821

§ 681.420 How must Local Boards design Workforce Innovation and Opportunity Act 823

§ 681.430 May youth participate in both the Workforce Innovation and Opportunity Act 826

§ 681.440 How does a local youth program determine if an 18 to 24 year old is enrolled in 827

§ 681.450 For how long must a local Workforce Innovation and Opportunity Act youth 828

§ 681.460 What services must local programs offer to youth participants? 828

§ 681.470 Does the Department require local programs to use WIOA funds for each of the 831

§ 681.480 What is a pre-apprenticeship program? 831

§ 681.490 What is adult mentoring? 832

§ 681.500 What is financial literacy education? 832

§ 681.510 What is comprehensive guidance and counseling? 834

§ 681.520 What are leadership development opportunities? 834

§ 681.530 What are positive social and civic behaviors? 835

§ 681.540 What is occupational skills training? 836

§ 681.550 Are Individual Training Accounts permitted for youth participants? 837

§ 681.560 What is entrepreneurial skills training and how is it taught? 837

§ 681.570 What are supportive services for youth? 839

§ 681.580 What are follow-up services for youth? 840

§ 681.590 What is the work experience priority? 841

§ 681.600 What are work experiences? 841

§ 681.610 How will local Workforce Innovation and Opportunity Act youth programs..... 842

§ 681.620 Does the Workforce Innovation and Opportunity Act require Local Boards to..... 843

§ 681.630 How are summer employment opportunities administered? 843

§ 681.640 What does education offered concurrently with and in the same context as 844

§ 681.650 Does the Department allow incentive payments for youth participants? 844

§ 681.660 How can parents, youth, and other members of the community get involved in 845

Subpart D—One-Stop Services to Youth..... 846

§ 681.710 Do Local Boards have the flexibility to offer services to area youth who are not 847

PART 682 – STATEWIDE ACTIVITIES UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT 848

Subpart B—Required and Allowable Statewide Employment and Training Activities 848

Subpart C—Rapid Response Activities..... 849

Subpart A—General Description 850

§ 682.110 How are statewide employment and training activities funded? 850

Subpart B—Required and Allowable Statewide Employment and Training Activities 851

§ 682.210 What are allowable statewide employment and training activities? 854

§ 682.220 What are States' responsibilities in regard to evaluations and research? 857

Subpart C—Rapid Response Activities 859

§ 682.310 Who is responsible for carrying out rapid response activities? 861

§ 682.320 What is layoff aversion, and what are appropriate layoff aversion strategies and 861

§ 682.330 What rapid response activities are required? 863

§ 682.340 May other activities be undertaken as part of rapid response? 866

§ 682.350 What is meant by "provision of additional assistance" in the Workforce 867

§ 682.360 What rapid response, layoff aversion, or other information will States be 867

§ 682.370 What are "allowable statewide activities" for which rapid response funds 867

PART 683 – ADMINISTRATIVE PROVISIONS UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT 868

Subpart B—Administrative Rules, Costs, and Limitations 870

Subpart C—Reporting Requirements 872

Subpart D—Oversight and Resolution of Findings 872

Subpart E—Pay-for-Performance Contract Strategies 873

Subpart F—Grievance Procedures, Complaints, and State Appeals Processes 873

Subpart G—Sanctions, Corrective Actions, and Waiver of Liability 874

Subpart H—Administrative Adjudication and Judicial Review 875

Subpart A—Funding and Closeout 876

§ 683.105 What award document authorizes the expenditure of funds under title I of the 877

§ 683.110 What is the period of performance of Workforce Innovation and Opportunity 880

§ 683.115 What planning information must a State submit in order to receive a formula 882

§ 683.120 How are Workforce Innovation and Opportunity Act title I formula funds 883

§ 683.125 What minimum funding provisions apply to Workforce Innovation and 889

§ 683.130 Does a Local Board have the authority to transfer funds between the adult 890

§ 683.135 What reallotment procedures does the Secretary use? 891

§ 683.140 What reallocation procedures must the Governors use? 892

§ 683.145 What merit review and risk assessment does the Department conduct for 893

§ 683.150 What closeout requirements apply to grants funded with Workforce Innovation 894

Subpart B—Administrative Rules, Costs, and Limitations 897

§ 683.205 What administrative cost limitations apply to Workforce Innovation and 902

§ 683.210 What audit requirements apply to the use of Workforce Innovation and 903

§ 683.215 What Workforce Innovation and Opportunity Act title I functions and activities 904

§ 683.220 What are the internal controls requirements for recipients and subrecipients of 908

§ 683.225 What requirements relate to the enforcement of the Military Selective Service 909

§ 683.230 Are there special rules that apply to veterans when income is a factor in 910

§ 683.235 May Workforce Innovation and Opportunity Act title I funds be spent for 910

§ 683.240 What are the instructions for using real property with Federal equity? 911

§ 683.245 Are employment generating activities, or similar activities, allowable under the 912

§ 683.250 What other activities are prohibited under title I of the Workforce Innovation 914

§ 683.255 What are the limitations related to religious activities of title I of the Workforce 915

§ 683.260 What prohibitions apply to the use of Workforce Innovation and Opportunity 916

§ 683.265 What procedures and sanctions apply to violations of this part? 918

§ 683.270 What safeguards are there to ensure that participants in Workforce Innovation 919

§ 683.275 What wage and labor standards apply to participants in activities under title I of 920

§ 683.280 What health and safety standards apply to the working conditions of 922

§ 683.285 What are a recipient's obligations to ensure nondiscrimination and equal 922

§ 683.290 Are there salary and bonus restrictions in place for the use of title I and 924

§ 683.295 Is earning of profit allowed under the Workforce Innovation and Opportunity 926

Subpart C—Reporting Requirements 927

Subpart D—Oversight and Resolution of Findings 930

§ 683.410 What are the oversight roles and responsibilities of recipients and subrecipients.....932

§ 683.420 What procedures apply to the resolution of findings arising from audits, ...934

§ 683.430 How does the Secretary resolve investigative and monitoring findings?.....936

§ 683.440 What is the Grant Officer resolution process? 937

Subpart E—Pay-for-Performance Contract Strategies 940

§ 683.510 What is a Workforce Innovation and Opportunity Act Pay-for-Performance.....941

§ 683.520 What funds can be used to support Workforce Innovation and Opportunity Act.....944

§ 683.530 How long are funds used for Workforce Innovation and Opportunity Act Pay-.....944

§ 683.540 What is the State's role in assisting local areas in using Workforce Innovation.....945

Subpart F—Grievance Procedures, Complaints, and State Appeals Processes.....946

§ 683.610 What processes does the Secretary use to review grievances and complaints of 950

§ 683.620 How are complaints and reports of criminal fraud and abuse addressed under 951

§ 683.630 What additional appeal processes or systems must a State have for the 952

§ 683.640 What procedures apply to the appeals of non-designation of local areas? 954

§ 683.650 What procedures apply to the appeals of the Governor's imposition of sanctions 955

Subpart G—Sanctions, Corrective Actions, and Waiver of Liability.....956

§ 683.710 Who is responsible for funds provided under title I and Wagner-Peyser? 958

§ 683.720 What actions are required to address the failure of a local area to comply with.....959

§ 683.730 When can the Secretary waive the imposition of sanctions?.....960

§ 683.740 What is the procedure to handle a recipient of title I Workforce Innovation and 962

§ 683.750 What procedure must be used for administering the offset/deduction provisions.....963

Subpart H—Administrative Adjudication and Judicial Review.....965

§ 683.810 What rules of procedure apply to hearings conducted under this subpart? 966

§ 683.820 What authority does the Administrative Law Judge have in ordering relief as an 968

§ 683.830 When will the Administrative Law Judge issue a decision? 969

§ 683.840 Is there an alternative dispute resolution process that may be used in place of an.....970

§ 683.850 Is there judicial review of a final order of the Secretary issued under WIOA? 971

PART 684 – INDIAN AND NATIVE AMERICAN PROGRAMS UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT 972

Subpart B—Service Delivery Systems Applicable to Section 166 Programs 972

Subpart C—Services to Customers 973

Subpart D—Supplemental Youth Services 974

Subpart E—Services to Communities 975

Subpart F—Accountability for Services and Expenditures 975

Subpart G—Section 166 Planning/Funding Process 976

Subpart H—Administrative Requirements 976

Subpart I—Miscellaneous Program Provisions 977

Subpart A—Purposes and Policies 978

§ 684.110 How must Indian and Native American programs be administered? 979

§ 684.120 What obligation does the Department have to consult with the Indian and Native 980

§ 684.130 What definitions apply to terms used in this part? 980

Subpart B—Service Delivery Systems Applicable to Section 166 Programs 984

§ 684.210 What priority for awarding grants is given to eligible organizations? 986

§ 684.220 What is the process for applying for a Workforce Innovation and Opportunity 987

§ 684.230 What appeal rights are available to entities that are denied a grant award? 987

§ 684.240 Are there any other ways in which an entity may be awarded a Workforce 988

§ 684.250 Can an Indian and Native American grantee's grant award be terminated? 988

§ 684.260 Does the Department have to award a grant for every part of the country? 989

§ 684.270 How are Workforce Innovation and Opportunity Act funds allocated to Indian 989

Subpart C—Services to Customers 991

§ 684.310 What are Indian and Native American program grantee allowable activities? 993

§ 684.320 Are there any restrictions on allowable activities? 996

§ 684.330 What is the role of Indian and Native American program grantees in the one- 998

§ 684.340 What policies govern payments to participants, including wages, training 1000

§ 684.350 What will the Department do to strengthen the capacity of Indian and Native 1001

Subpart D—Supplemental Youth Services 1001

§ 684.410 What entities are eligible to receive supplemental youth services funding? 1002

§ 684.420 What are the planning requirements for receiving supplemental youth services 1002

§ 684.430 What individuals are eligible to receive supplemental youth services? 1003

§ 684.440 How is funding for supplemental youth services determined? 1003

§ 684.450 How will supplemental youth services be provided? 1004

§ 684.460 What performance measures are applicable to the supplemental youth services 1005

Subpart E—Services to Communities 1006

§ 684.510 What services may Indian and Native American grantees provide to the 1007

§ 684.520 Must Indian and Native American program grantees give preference to Indian 1009

§ 684.530 What rules govern the issuance of contracts and/or subgrants? 1009

Subpart F—Accountability for Services and Expenditures 1009

§ 684.610 How is this accountability documented and fulfilled? 1010

§ 684.620 What performance measures are in place for the Indian and Native American 1011

§ 684.630 What are the requirements for preventing fraud and abuse under the WIOA? 1012

§ 684.640 What grievance systems must an Indian and Native American program 1014

§ 684.650 Can Indian and Native American grantees exclude segments of the eligible 1014

Subpart G—Section 166 Planning/Funding Process 1015

§ 684.710 What information must be included in the 4-year plans as part of the 1016

§ 684.720 When must the 4-year plan be submitted? 1017

§ 684.730 How will the Department review and approve such plans? 1017

§ 684.740 Under what circumstances can the Department or the Indian and Native 1018

Subpart H—Administrative Requirements 1019

§ 684.810 What types of costs are allowable expenditures under the Indian and Native 1020

§ 684.820 What rules apply to administrative costs under the Indian and Native American 1020

§ 684.830 Does the Workforce Innovation and Opportunity Act administrative cost limit 1021

§ 684.840 How should Indian and Native American program grantees classify costs? 1021

§ 684.850 What cost principles apply to Indian and Native American funds? 1022

§ 684.860 What audit requirements apply to Indian and Native American grants? 1022

§ 684.870 What is "program income" and how is it regulated in the Indian and Native 1022

Subpart I—Miscellaneous Program Provisions 1023

§ 684.910 What information is required in a waiver request? 1024

§ 684.920 What provisions of law or regulations may not be waived? 1024

§ 684.930 May Indian and Native American program grantees combine or consolidate 1025

§ 684.940 What is the role of the Native American Employment and Training Council? 1026

§ 684.950 Does the Workforce Innovation and Opportunity Act provide any additional 1026

PART 685 – NATIONAL FARMWORKER JOBS PROGRAM UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT 1027

Subpart B—The Service Delivery System for the National Farmworker Jobs Program 1028

Subpart C—The National Farmworker Jobs Program Services to Eligible Migrant and Seasonal Farmworkers 1028

Subpart D—Performance Accountability, Planning, and Waiver Provisions 1029

Subpart E—Supplemental Youth Workforce Investment Activity Funding Under the Workforce Innovation and Opportunity Act 1030

Subpart A—Purpose and Definitions 1031

§ 685.110 What definitions apply to this program? 1032

§ 685.120 How does the Department administer the National Farmworker Jobs Program? 1038

§ 685.130 How does the Department assist grantees to serve eligible migrant and seasonal 1038

§ 685.140 What regulations apply to the programs authorized under the Workforce 1039

Subpart B—The Service Delivery System for the National Farmworker Jobs Program 1040

§ 685.210 How does an eligible entity become a grantee? 1040

§ 685.220 What is the role of the grantee in the one-stop delivery system? 1041

§ 685.230 Can a grantee's designation be terminated? 1041

§ 685.240 How does the Department use funds appropriated under the Workforce 1042

Subpart C—The National Farmworker Jobs Program Services to Eligible Migrant and Seasonal Farmworkers 1042

§ 685.310 What are the basic components of an National Farmworker Jobs Program 1043

§ 685.320 Who is eligible to receive services under the National Farmworker Jobs 1044

§ 685.330 How are services delivered to eligible migrant and seasonal farmworkers? 1044

§ 685.340 What career services must grantees provide to eligible migrant and seasonal 1045

§ 685.350 What training services must grantees provide to eligible migrant and seasonal 1046

§ 685.360 What housing services must grantees provide to eligible migrant and seasonal 1046

§ 685.370 What services may grantees provide to eligible migrant and seasonal 1048

§ 685.380 What related assistance services may be provided to eligible migrant and 1049

§ 685.390 When may eligible migrant and seasonal farmworkers receive related 1049

Subpart D—Performance Accountability, Planning, and Waiver Provisions 1050

§ 685.410 What planning documents must a grantee submit? 1051

§ 685.420 What information is required in the grantee program plan? 1051

§ 685.430 Under what circumstances are the terms of the grantee's program plan modified 1053

§ 685.440 How are costs classified under the National Farmworker Jobs Program? 1053

§ 685.450 What is the Workforce Innovation and Opportunity Act administrative cost 1054

§ 685.460 Are there regulatory and/or statutory waiver provisions that apply to the 1055

§ 685.470 How can grantees request a waiver? 1055

Subpart E—Supplemental Youth Workforce Investment Activity Funding Under the Workforce Innovation and Opportunity Act 1056

§ 685.510 What requirements apply to grants funded by the Workforce Innovation and 1057

§ 685.520 What is the application process for obtaining a grant funded by the Workforce 1057

§ 685.530 What planning documents are required for grants funded by the Workforce 1057

§ 685.540 How are funds allocated to grants funded by the Workforce Innovation and 1058

§ 685.550 Who is eligible to receive services through grants funded by the Workforce 1058

PART 686 – THE JOB CORPS UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT 1059

Subpart B—Site Selection and Protection and Maintenance of Facilities 1059

Subpart C—Funding and Selection of Center Operators and Service Providers 1060

Subpart D—Recruitment, Eligibility, Screening, Selection and Assignment, and Enrollment 1061

Subpart E—Program Activities and Center Operations 1062

Subpart F—Student Support 1063

Subpart G—Career Transition and Graduate Services 1063

Subpart H—Community Connections 1064

Subpart I—Administrative and Management Provisions 1064

Subpart J—Performance 1066

Subpart A—Scope and Purpose 1067

§ 686.110 What is the Job Corps program? 1067

§ 686.120 What definitions apply to this part? 1068

§ 686.130 What is the role of the Job Corps Director? 1076

Subpart B—Site Selection and Protection and Maintenance of Facilities 1077

§ 686.210 How are center facility improvements and new construction handled? 1077

§ 686.220 Who is responsible for the protection and maintenance of center facilities? 1077

Subpart C—Funding and Selection of Center Operators and Service Providers 1078

§ 686.310 How are entities selected to receive funding to operate centers? 1079

§ 686.320 What if a current center operator is deemed to be an operator of a high- 1083

§ 686.330 What is the length of an agreement entered into by the Secretary for operation 1085

§ 686.340 How are entities selected to receive funding to provide outreach and admission, ... 1089

§ 686.350 What conditions apply to the operation of a Civilian Conservation Center?.....1091

§ 686.360 What are the requirements for award of contracts and payments to Federal.....1092

Subpart D—Recruitment, Eligibility, Screening, Selection and Assignment, and Enrollment.....1093

§ 686.410 Are there additional factors which are considered in selecting an eligible.....1095

§ 686.420 Are there any special requirements for enrollment related to the Military.....1096

§ 686.430 What entities conduct outreach and admissions activities for the Job Corps 1097

§ 686.440 What are the responsibilities of outreach and admissions providers? 1097

§ 686.450 How are applicants who meet eligibility and selection criteria assigned to 1098

§ 686.460 What restrictions are there on the assignment of eligible applicants for.....1099

§ 686.470 May an individual who is determined to be ineligible or an individual who is.....1100

§ 686.480 At what point is an applicant considered to be enrolled in Job Corps?.....1101

§ 686.490 How long may a student be enrolled in Job Corps?.....1101

Subpart E—Program Activities and Center Operations 1102

§ 686.505 What types of training must Job Corps centers provide?.....1103

§ 686.510 Are entities other than Job Corps center operators permitted to provide 1105

§ 686.515 What are advanced career training programs? 1106

§ 686.520 What responsibilities do the center operators have in managing work-.....1107

§ 686.525 Are students permitted to hold jobs other than work-based learning.....1107

§ 686.530 What residential support services must Job Corps center operators provide?.....1108

§ 686.535 Are Job Corps centers required to maintain a student accountability system?.....1109

§ 686.540 Are Job Corps centers required to establish behavior management systems?.....1109

§ 686.545 What is Job Corps' zero tolerance policy? 1110

§ 686.550 How does Job Corps ensure that students receive due process in disciplinary 1111

§ 686.555 What responsibilities do Job Corps centers have in assisting students with child 1111

§ 686.560 What are the center's responsibilities in ensuring that students' religious rights 1112

§ 686.565 Is Job Corps authorized to conduct pilot and demonstration projects? 1112

Subpart F—Student Support 1113

§ 686.610 When are students authorized to take leaves of absence from their Job Corps 1113

§ 686.620 Are Job Corps students eligible to receive cash allowances and performance 1114

§ 686.630 Are student allowances subject to Federal payroll taxes? 1114

§ 686.640 Are students provided with clothing? 1115

Subpart G—Career Transition and Graduate Services 1115

§ 686.710 What career transition services are provided for Job Corps enrollees? 1115

§ 686.720 Who provides career transition services? 1116

§ 686.730 What are the responsibilities of career transition service providers? 1116

§ 686.740 What services are provided for program graduates? 1117

§ 686.750 Are graduates provided with transition allowances? 1117

§ 686.760 What services are provided to former enrollees? 1118

Subpart H—Community Connections 1118

§ 686.810 What is the makeup of a workforce council and what are its responsibilities? 1120

§ 686.820 How will Job Corps coordinate with other agencies? 1122

Subpart I—Administrative and Management Provisions 1123

§ 686.905 Are loss and damages that occur to persons or personal property of students at 1123

§ 686.910 If a student is injured in the performance of duty as a Job Corps student, what 1124

§ 686.915 When is a Job Corps student considered to be in the performance of duty? 1125

§ 686.920 How are students protected from unsafe or unhealthy situations? 1126

§ 686.925 What are the requirements for criminal law enforcement jurisdiction on center 1127

§ 686.930 Are Job Corps operators and service providers authorized to pay State or local 1128

§ 686.935 What are the financial management responsibilities of Job Corps center 1128

§ 686.940 Are center operators and service providers subject to Federal audits? 1129

§ 686.945 What are the procedures for management of student records? 1130

§ 686.950 What procedures apply to disclosure of information about Job Corps students 1130

§ 686.955 What are the reporting requirements for center operators and operational.....1131

§ 686.960 What procedures are available to resolve complaints and disputes?.....1131

§ 686.965 How does Job Corps ensure that complaints or disputes are resolved in a timely 1132

§ 686.970 How does Job Corps ensure that centers or other service providers comply with 1133

§ 686.975 How does Job Corps ensure that contract disputes will be resolved? 1134

§ 686.980 How does Job Corps resolve disputes between the U.S. Department of Labor and.....1134

§ 686.985 What Department of Labor equal opportunity and nondiscrimination.....1134

Subpart J--Performance.....1135

§ 686.1010 What are the primary indicators of performance for Job Corps centers and the 1136

§ 686.1020 What are the indicators of performance for Job Corps outreach and admissions.....1137

§ 686.1030 What are the indicators of performance for Job Corps career transition service 1138

§ 686.1040 What information will be collected for use in the Annual Report?.....1139

§ 686.1050 How are the expected levels of performance for Job Corps centers, outreach 1142

§ 686.1060 How are center rankings established? 1143

§ 686.1070 How and when will the Secretary use Performance Improvement Plans? 1143

PART 687 – NATIONAL DISLOCATED WORKER GRANTS.....1146

§ 687.100 What are the types and purposes of national disclosed worker grants under the.....1147

§ 687.110 What are major economic dislocations or other events which may qualify for a.....1148

§ 687.120 Who is eligible to apply for national dislocated worker grants? 1150

§ 687.130 When should applications for national dislocated worker grants be submitted to.....1151

§ 687.140 What activities are applicants expected to conduct before a national dislocated.....1152

§ 687.150 What are the requirements for submitting applications for national dislocated.....1153

§ 687.160 What is the timeframe for the Department to issue decisions on national 1154

§ 687.170 Who is eligible to be served under national dislocated worker grants?.....1154

§ 687.180 What are the allowable activities under national dislocated worker grants? 1157

§ 687.190 How do statutory and regulatory waivers apply to national dislocated worker.....1159

§ 687.200 What are the program and administrative requirements that apply to national 1160

PART 688 – PROVISIONS GOVERNING THE YOUTHBUILD PROGRAM 1162

Subpart B—Funding and Grant Applications 1162

Subpart C—Program Requirements 1163

Subpart D—Performance Indicators 1163

Subpart E—Administrative Rules, Costs, and Limitations 1164

Subpart F—Additional Requirements 1165

Subpart A—Purpose and Definitions 1165

§ 688.110 What are the purposes of the YouthBuild program? 1166

§ 688.120 What definitions apply to this part? 1167

Subpart B—Funding and Grant Applications 1185

§ 688.210 How does an eligible entity apply for grant funds to operate a YouthBuild 1185

§ 688.220 How are eligible entities selected to receive grant funds? 1186

§ 688.230 What are the minimum requirements to apply for YouthBuild funds? 1191

§ 688.240 How are eligible entities notified of approval for grant funds? 1195

Subpart C—Program Requirements 1196

§ 688.310 Are there special rules that apply to veterans? 1197

§ 688.320 What eligible activities may be funded under the YouthBuild program? 1198

§ 688.330 What level of training qualifies a construction project as a qualifying work site 1201

§ 688.340 What timeframes apply to participation? 1202

§ 688.350 What timeframes must be devoted to education and workforce investment or 1202

§ 688.360 What timeframes apply to follow-up services? 1203

§ 688.370 What are the requirements for exit from the YouthBuild program? 1203

§ 688.380 What is the role of the YouthBuild grantee in the one-stop system? 1204

Subpart D—Performance Indicators 1204

§ 688.410 What are the required levels of performance for the performance indicators? 1205

§ 688.420 What are the reporting requirements for YouthBuild grantees? 1206

§ 688.430 What are the due dates for quarterly reporting? 1207

Subpart E—Administrative Rules, Costs, and Limitations 1207

§ 688.510 How may grantees provide services under the YouthBuild program? 1208

§ 688.520 What cost limits apply to the use of YouthBuild program funds? 1209

§ 688.530 What are the cost-sharing or matching requirements of the YouthBuild 1209

§ 688.540 What are considered to be leveraged funds? 1210

§ 688.550 How are the costs associated with real property treated in the YouthBuild 1211

§ 688.560 What participant costs are allowable under the YouthBuild program? 1213

§ 688.570 Does the Department allow incentive payments in the YouthBuild program? 1214

§ 688.580 What effect do payments to YouthBuild participants have on eligibility for other 1215

§ 688.590 What program income requirements apply under the YouthBuild program? 1215

§ 688.600 Are YouthBuild programs subject to the Davis-Bacon Act labor standards? 1216

§ 688.610 What are the recordkeeping requirements for YouthBuild programs? 1216

Subpart F—Additional Requirements 1217

§ 688.710 What are the reporting requirements for youth safety? 1218

§ 688.720 What environmental protection laws apply to the YouthBuild program? 1218

§ 688.730 What requirements apply to YouthBuild housing? 1218

PART 651 – GENERAL PROVISIONS GOVERNING THE FEDERAL-STATE EMPLOYMENT SERVICE SYSTEM 1220

§ 651.10 Definitions of terms used in parts 651, 652, 653, and 658 1221

PART 652 – ESTABLISHMENT AND FUNCTIONING OF STATE EMPLOYMENT SERVICES 1241

Subpart B—Services for Veterans 1242

Subpart C—Wagner-Peyser Act Services in a One-Stop Delivery System Environment 1243

Subpart D—Workforce and Labor Market Information 1244

Subpart A—Employment Service Operations 1245

§ 652.2 Scope and purpose of the employment service system. 1245

§ 652.3 Public labor exchange services system. 1245

§ 652.4 Allotment of funds and grant agreement. 1246

§ 652.5 Services authorized. 1247

§ 652.6 [Reserved]. 1247

§ 652.9 Labor disputes. 1253

Subpart B—Services for Veterans 1254

§ 652.100 Services for veterans. 1254

Subpart C—Wagner-Peyser Act Services in a One-Stop Delivery System Environment 1255

§ 652.201 What is the role of the State agency in the one-stop delivery system? 1255

§ 652.202 May local Employment Service Offices exist outside of the one-stop service 1256

§ 652.203 Who is responsible for funds authorized under the Act in the workforce 1256

§ 652.204 Must funds authorized under the Act (the Governor's reserve) flow through the 1257

§ 652.205 May funds authorized under the Act be used to supplement funding for labor 1257

§ 652.206 May a State use funds authorized under the Act to provide applicable “career 1258

§ 652.207 How does a State meet the requirement for universal access to services provided 1258

§ 652.208 How are applicable career services related to the methods of service delivery 1260

§ 652.209 What are the requirements under the Act for providing reemployment services 1260

§ 652.210 What are the Act's requirements for administration of the work test, including 1261

§ 652.211 What are State planning requirements under the Act? 1262

§ 652.215 Do any provisions in the Workforce Innovation and Opportunity Act change the 1263

§ 652.216 May the one-stop operator provide guidance to State merit staff employees in 1264

Subpart D—Workforce and Labor Market Information 1264

§ 652.301 What are wage records for purposes of the Wagner-Peyser Act? 1266

§ 652.302 How do the Secretary of Labor’s responsibilities described in this part apply to 1266

§ 652.303 How do the requirements of part 603 of this chapter apply to wage records? 1267

PART 653 – SERVICES OF THE EMPLOYMENT SERVICE SYSTEM 1267

Subpart C – E [Reserved]..... 1268

Subpart A—[Reserved]..... 1269

§ 653.101 Provision of services to migrant and seasonal farmworkers. 1270

§ 653.102 Job information. 1270

§ 653.103 Process for migrant and seasonal farmworkers to participate in workforce..... 1270

§ 653.107 Outreach and Agricultural Outreach Plan. 1271

§ 653.108 State Workforce Agency and State monitor advocate responsibilities. 1277

§ 653.109 Data collection and performance accountability measures. 1286

§ 653.110 Disclosure of data. 1289

§ 653.111 State agency staffing requirements..... 1290

Subpart C - E—[Reserved] 1291

§ 653.501 Requirements for processing clearance orders. 1292

§ 653.502 Conditional access to the agricultural recruitment system. 1301

§ 653.503 Field checks. 1304

PART 654 – SPECIAL RESPONSIBILITIES OF THE EMPLOYMENT SERVICE SYSTEM..... 1306

Subpart E—Housing for Agricultural Workers..... 1306

Subpart E—Housing for Agricultural Workers..... 1307

§ 654.401 Applicability..... 1308

§ 654.402 Variances..... 1309

§ 654.403 [Reserved]. 1311

§ 654.405 Water supply. 1312

§ 654.406 Excreta and liquid waste disposal. 1312

§ 654.407 Housing. 1312

§ 654.408 Screening. 1314

§ 654.409 Heating. 1314

§ 654.410 Electricity and lighting. 1315

§ 654.411 Toilets. 1315

§ 654.412 Bathing, laundry, and hand washing. 1316

§ 654.413 Cooking and eating facilities. 1317

§ 654.414 Garbage and other refuse. 1318

§ 654.415 Insect and rodent control. 1319

§ 654.416 Sleeping facilities. 1319

§ 654.417 Fire, safety, and first aid. 1319

PART 658 – ADMINISTRATIVE PROVISIONS GOVERNING THE EMPLOYMENT SERVICE SYSTEM 1320

Complaints Filed at the Local and State Level 1321

When a Complaint Rises to the Federal Level 1321

Subpart F—Discontinuation of Services to Employers by the Employment Service System 1322

Subpart G—Review and Assessment of State Agency Compliance With Employment Service Regulations 1322

Subpart H—Federal Application of Remedial Action to State Agencies 1323

Subpart A - D [Reserved] 1323

Complaints Filed at the Local and State Level 1324

§ 658.411 Action on complaints. 1327

§ 658.417 State hearings. 1336

§ 658.418 Decision of the State hearing official. 1338

§ 658.419 Apparent violations. 1340

When a Complaint Rises to the Federal Level 1340

§ 658.421 Handling of employment service regulation-related complaints. 1341

§ 658.422 Handling of employment-related law complaints by the Regional Administrator. 1343

§ 658.424 Proceedings before the Office of Administrative Law Judges. 1344

§ 658.425 Decision of Department of Labor Administrative Law Judge. 1346

§ 658.426 Complaints against the United States Employment Service.....1347

Subpart F—Discontinuation of Services to Employers by the Employment Service System.....1348

§ 658.501 Basis for discontinuation of services.....1348

§ 658.502 Notification to employers.....1349

§ 658.503 Discontinuation of services.....1354

§ 658.504 Reinstatement of services.....1354

Subpart G—Review and Assessment of State Agency Compliance With Employment Service Regulations.....1355

§ 658.601 State agency responsibility.....1355

§ 658.602 Employment and Training Administration National Office responsibility.....1360

§ 658.603 Employment and Training Administration regional office responsibility.....1365

§ 658.604 Assessment and evaluation of program performance data.....1374

§ 658.605 Communication of findings to State agencies.....1375

Subpart H—Federal Application of Remedial Action to State Agencies.....1376

§ 658.701 Statements of policy.....1376

§ 658.702 Initial action by the Regional Administrator.....1377

§ 658.703 Emergency corrective action.....1381

§ 658.704 Remedial actions.....1382

§ 658.705 Decision to decertify.....1385

§ 658.706 Notice of decertification.....1387

§ 658.707 Requests for hearings.....1387

§ 658.708 Hearings.....1388

§ 658.709 Conduct of hearings.....1388

§ 658.710 Decision of the Administrative Law Judge.....1389

§ 658.711 Decision of the Administrative Review Board.....1390

Billing Codes: 4510-FR-P 4510-FT-P.....1391

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DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 603, 651, 652, 653 654, 658, 675, 679, 680, 681, 682, 683, 684, 685, 686, 687, and 688

Docket No. ETA-2015-0001

RIN: 1205-AB73

Workforce Innovation and Opportunity Act; Notice of Proposed Rulemaking AGENCY:

Employment and Training Administration (ETA), Labor

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: The Department of Labor (DOL) is proposing, through rulemaking, to implement titles I and III of the Workforce Innovation and Opportunity Act of 2014 (WIOA). Through these

regulations, the Department proposes to implement job training system reform and strengthen the workforce investment system of the nation to put Americans, particularly those individuals with barriers to employment, back to work and make the United States more

competitive in the 21st Century. This proposed rule intends to provide guidance for statewide and local workforce investment systems that increase the employment, retention and earnings of participants, and increase occupational skill attainment by participants, and as a result, improve the quality of the workforce, reduce welfare dependency, and enhance the productivity and competitiveness of the nation.

DATES: To be ensured consideration, comments must be submitted in writing on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number ETA- 2015-0001, for Regulatory Information Number (RIN) 1205-AB73, by one of the following methods:

Federal e-Rulemaking Portal: http://www.regulations.gov. Follow the Web site instructions for submitting comments.

Mail and hand delivery/courier: Written comments, disk, and CD-ROM submissions may be mailed to Adele Gagliardi, Administrator, Office of Policy Development and Research,

U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-5641, Washington, D.C. 20210.

Instructions: Label all submissions with "RIN 1205-AB73."

Please submit your comments by only one method. Please be advised that the Department will post all comments received that related to this NPRM on http://www.regulations.gov without

making any change to the comments or redacting any information. The http://www.regulations.gov Web site is the Federal e-rulemaking portal and all comments posted there are available and accessible to the public. Therefore, the Department recommends that commenters remove personal information such as Social Security Numbers (SSNs), personal addresses, telephone numbers, and e-mail addresses included in their comments as such information may become easily available to the public via the http://www.regulations.gov Web site. It is the responsibility of the commenter to safeguard personal information.

Also, please note that due to security concerns, postal mail delivery in Washington, DC may be delayed. Therefore, the Department encourages the public to submit comments on http://www.regulations.gov.

Docket: All comments on this proposed rule will be available on the http://www.regulations.gov Web site and can be found using RIN 1205-AB73. The Department also will make all the comments it receives available for public inspection by appointment during normal business hours at the above address. If you need assistance to review the comments, the Department will provide appropriate aids such as readers or print magnifiers. The Department will make copies of this proposed rule available, upon request, in large print and electronic file on computer disk. To schedule an appointment to review the comments and/or obtain the proposed rule in an alternative format, contact the Office of Policy Development and Research (OPDR) at (202) 693-3700 (this is not a toll-free number). You may also contact this office at the address listed below.

Comments under the Paperwork Reduction Act (PRA): In addition to filing comments with ETA, persons wishing to comment on the information collection (IC) aspects of this rule may send comments to: Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL-

ETA, Office of Management and Budget, Room 10235, 725 17th Street, NW, Washington, D.C. 20503, Fax: 202-395-6881 (this is not a toll-free number), e-mail: OIRA_submission@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Adele Gagliardi, Administrator, Office of Policy Development and Research (OPDR), U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, N.W., Room N-5641, Washington, D.C.

20210, Telephone: (202) 693-3700 (voice) (this is not a toll-free number) or 1-800-326-2577 (TDD).

SUPPLEMENTAL INFORMATION:

Preamble Table of Contents

I. Executive Summary

II. Acronyms and Abbreviations

III. Background

A. Workforce Innovation and Opportunity Act Principles

B. Major Changes from Current Workforce Investment Act of 1998

C. Rule Format

D. Legal Basis

IV. Section-by-Section Discussion of Proposal

A. Part 603 – Federal-State Unemployment Compensation Program

B. Part 675 – Introduction to the Regulations for the Workforce Innovation and Opportunity Systems Under Title I of the Workforce Innovation and Opportunity Act

C. Part 679 – Statewide and Local Governance of the Workforce Innovation and Opportunity System Under Title I of the Workforce Innovation and Opportunity Act

D. Part 680 – Adult and Dislocated Worker Activities Under Title I of the Workforce Innovation and Opportunity Act

E. Part 681 – Youth Activities Under Title I of the Workforce Innovation and Opportunity Act

F. Part 682 – Statewide Activities Under Title I of the Workforce Innovation and Opportunity Act

G. Part 683 – Administrative Provisions Under Title I of the Workforce Innovation and Opportunity Act

H. Part 684 – Indian and Native American Programs Under Title I of the Workforce Innovation and Opportunity Act

I. Part 685 – National Farmworker Jobs Program Under Title I of the Workforce Innovation and Opportunity Act

J. Part 686 – The Job Corps Under Title I of the Workforce Innovation and Opportunity Act

K. Part 687 – National Dislocated Worker Grants

L. Part 688 – Provisions Governing the YouthBuild Program

M. Part 651 – General Provisions Governing the Federal-State Employment Service System

N. Part 652 – Establishment and Functioning of State Employment Services

O. Part 653 – Services of the Employment Service System

P. Part 654 – Special Responsibilities of the Employment Service System

Q. Part 658 – Administrative Provisions Governing the Employment Service System

V. Rulemaking Analyses and Notices

A. Executive Orders 12866 and 13563: Regulatory Planning and Review

B. Paperwork Reduction Act

C. Executive Order 13132 (Federalism)

D. Unfunded Mandates Reform Act of 1995

E. Plain Language

F. Assessment of Federal Regulations and Policies on Families

G. Regulatory Flexibility Act

H. Small Business Regulatory Enforcement Fairness Act of 1996

I. Executive Order 13175 (Indian Tribal Governments)

J. Executive Order 12630 (Government Actions and Interference with Constitutionally

Protected Property Rights)

K. Executive Order 12988 (Civil Justice Reform)

L. Executive Order 13211 (Energy Supply)

Executive Summary

On July 22, 2014, President Obama signed the Workforce Innovation and Opportunity Act (WIOA) (Pub. L. 113-128), comprehensive legislation that reforms and modernizes the public workforce system. It reaffirms the role of the public workforce system, and brings together and enhances several key employment, education, and training programs. WIOA provides resources, services, and leadership tools for the workforce system to help individuals find good jobs and stay employed and improves employer prospects for success in the global marketplace. It ensures that the workforce system operates as a comprehensive, integrated and streamlined system to provide pathways to prosperity for those it serves and continuously improves the quality and performance of its services.

The Department of Labor is publishing this NPRM to implement those provisions of WIOA that affect the core programs under titles I and III, and the Job Corps and national programs

authorized under title I which will administered by the Department. In addition to this NPRM, the Departments of Education (ED) and Labor (DOL) are jointly publishing an NPRM to implement those provisions of WIOA that affect all of the WIOA core programs (titles I-IV) and which will have to be jointly overseen and administered by both Departments. Readers should note that there are a number of cross-references to the Joint NPRM published by ED and DOL, with particular focus on those provisions in the Joint NPRM that have to do with performance reporting among all the core programs. Finally, this NPRM has been structured so that the proposed Code of Federal Regulations (CFR) parts will align with the Joint NPRM CFR parts in once all of the proposed rules of have been finalized.

WIOA seeks to deliver a broad array of integrated services to individuals seeking jobs and skills training, as well as employers seeking skilled workers by improving the workforce system, more closely aligning it with regional economies and strengthening the network of about 2,500 one-stop centers. Customers must have access to a seamless system of high-quality services through coordination of programs, services and governance structures. The Act builds closer ties among key workforce partners—business leaders, workforce boards, labor unions, community colleges, non-profit organizations, youth-serving organizations, and State and local officials—in striving for a more job-driven approach to training and skills development.

WIOA will help job seekers and workers access employment, education, training, and support services to succeed in the labor market and match employers with the skilled workers they need to compete in the global economy. The purposes of WIOA described in the Act include:

- Increasing access to and opportunities for the employment, education, training, and support services that individuals need, particularly those with barriers to employment.

- Supporting the alignment of workforce investment, education, and economic development

systems, in support of a comprehensive, accessible, and high-quality workforce development system.

- Improving the quality and labor market relevance of workforce investment, education, and economic development efforts.

- Promoting improvement in the structure and delivery of services.

- Increasing the prosperity of workers and employers.

- Providing workforce development activities that increase employment, retention, and earnings of participants and that increase post-secondary credential attainment and as a result, improve the quality of the workforce, reduce welfare dependency, increase economic self-sufficiency, meet skill requirements of employers, and enhance productivity, and competitiveness of the nation.

WIOA is complemented by the groundwork laid by the Administration-wide review of employment, education, and training programs to ensure Federal agencies do everything possible to prepare ready-to-work-Americans with ready-to-be-filled jobs. The review identified seven priorities for these Federal programs:

- Work up-front with employers to determine local or regional hiring needs and design training programs that are responsive to those needs;

- Offer work-based learning opportunities with employers—including on-the-job training, internships, and pre-apprenticeships and registered apprenticeships—as training paths to employment;

- Make better use of data to drive accountability, inform what programs are offered and

what is taught, and offer user-friendly information for job seekers to choose what programs and pathways work for them and are likely to result in a job;

- Measure and evaluate employment and earnings outcomes;

- Promote a seamless progression from one educational stepping stone to another, and across work-based training and education, so individuals' efforts result in progress;

- Break down barriers to accessing job-driven training and hiring for any American who is willing to work, including access to supportive services and relevant guidance; and

- Create regional collaborations among American Job Centers, education institutions, labor, and nonprofits.

As WIOA implementation progresses, success in accomplishing the purposes of WIOA at the State, local, and regional levels, will be assessed by whether:

- One-stop centers are recognized as a valuable community resource and are known for high quality, comprehensive services for customers.

- The core programs and one-stop partners provide seamless, integrated customer service.

- Program performance, labor market and related data drive policy and strategic decisions and inform customer choice.

- Youth programs reconnect out-of-school youth (OSY) to education and jobs.

- Job seekers access quality career services either online or in a one-stop career center through a "common front door" that connects them to the right services.

- One-stop centers facilitate access to high quality, innovative education and training.

- Services to businesses are robust and effective, meeting businesses' workforce needs across the business lifecycle.

I. Acronyms and Abbreviations

AEFLA	Adult Education and Family Literacy Act
ALJ	Administrative Law Judge
ANVSA	Alaska Native Village Service Area
AOP	Agricultural Outreach Plan
ARS	Agricultural Recruitment System
AWOL	Absent Without Official Leave
BLS	Bureau of Labor Statistics
CBO	Community-based organization

CCC	Civilian Conservation Center
CEO	Chief elected official
CFR	Code of Federal Regulations
Complaint System	Employment Service and Employment-Related Law Complaint System
COSO	Committee of Sponsoring Organizations of the Treadway Commission
CTT	Career Technical Training
DINAP	Division of Indian and Native American Programs
DOL	Department of Labor
ED	Department of Education
E.O.	Executive Order
EO	Equal opportunity
ES	Employment Service
ESA	Employment Standards Administration
ESARS	Employment Security Automated Reporting System
ETA	Employment and Training Administration

ETP	Eligible training provider
ETPL	Eligible training provider list
FECA	Federal Employees Compensation Act
FEIN	Federal employer identification number
FEMA	Federal Emergency Management Agency
FERPA	Family Educational Rights and Privacy Act
FLSA	Fair Labor Standards Act
FOA	Funding Opportunity Announcement
FR	Federal Register
GED	General Educational Development
GIS	Geographic information system
GPRA	Government Performance and Results Act
HEARTH	Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009
HHS	Department of Health and Human Services
HSD	High School Diploma

HUD	U.S. Department of Housing and Urban Development
IC	Information collection
IEVS	Income and Eligibility Verification System
INA	Indian and Native American
ISDEAA	Indian Self-Determination and Education Assistance Act
ISY	In-school youth
ITA	Individual Training Account
JIS	Job Information Service
JS	Job Service
JTPA	Job Training Partnership Act
JVSG	Jobs for Veterans State Grants
LEHD	Longitudinal Employer-Household Dynamics
LEP	Limited English proficiency
MOU	Memorandum of Understanding
MSFW	Migrant and Seasonal Farmworker
NAACP	National Association for the Advancement of Colored People

NAFTA	North American Free Trade Agreement
NAICS	North American Industry Classification System
NDWG	National Dislocated Worker Grant
NEG	National Emergency Grant
NFJP	National Farmworker Jobs Program
NICRA	Negotiated Indirect Cost Rate Agreement
NPRM	Notice of Proposed Rulemaking
OALJ	Office of Administrative Law Judges
OBS	On-board strength
OFLC	Office of Foreign Labor Certification
OJT	On-the-job training
OMB	Office of Management and Budget
OMS	Outcome Measurement System
OPDR	Office of Policy Development and Research
OSHA	Occupational Safety and Health Administration
OSY	Out-of-school youth

OTSA	Oklahoma Tribal Service Area
OWI	Office of Workforce Investment
PART	Program Assessment and Rating Tool
PBP	Program Budget Plan
PRA	Paperwork Reduction Act of 1995
PRH	Policy and Requirements Handbook
Pub. L.	Public Law
PY	Program year
RFA	Regulatory Flexibility Act
RFP	Requests for proposals
Richey Order	Judge Richey Court Order
RIN	Regulatory Information Number

SBA	Small Business Administration
SBREFA	Small Business Regulatory Enforcement Fairness Act of 1996
SDA	Service delivery area
sec.	Section of a Public Law or the United States Code

SESA	State Employment Security Agency
SMA	State Monitor Advocate
SOC	Standard Occupational Classification
SNAP	Supplemental Nutrition Assistance Program
SSA	Social Security Act
SSN	Social Security Number
State Board	State Workforce Development Board
STAWRS	Simplified Tax and Wage Reporting System
SWA	State Workforce Agency
TAA	Trade Adjustment Assistance
TANF	Temporary Assistance for Needy Families
TEGL	Training and Employment Guidance Letter
TEN	Training and Employment Notice
UC	Unemployment Compensation
UCX	Unemployment Compensation for Ex-service members
UI	Unemployment insurance

U.S.C.	United States Code
VA	Department of Veterans Affairs
VETS	Veterans' Employment and Training Service
VR	Vocational rehabilitation
Wagner-Peyser	Wagner-Peyser Act of 1933
WARN	Worker Adjustment and Retraining Notification
WDB	Workforce Development Board
WHD	Wage and Hour Division
WIA	Workforce Investment Act of 1998
WIAC	Workforce Information Advisory Council
WIC	Workforce Information Council
WIOA	Workforce Innovation and Opportunity Act of 2014
WLMI	Workforce and Labor Market Information
WLMIS	Workforce and Labor Market Information System
WRIS	Wage Record Interchange System

II. Background

2. Workforce Innovation and Opportunity Act Principles

On July 22, 2014, President Obama signed the WIOA, the first legislative reform of the public workforce system in more than 15 years, which passed Congress by a wide bipartisan majority. WIOA supersedes the Workforce Investment Act of 1998 (WIA) and amends the Adult Education and Family Literacy Act (AEFLA), the Wagner-Peyser Act, and the Rehabilitation Act of 1973. WIOA presents an extraordinary opportunity for the workforce system to accelerate its transformational efforts and demonstrate its ability to improve job and career options for our citizens through an integrated, job-driven public workforce system that links diverse talent to our nation's businesses. It supports the development of strong, vibrant regional economies where businesses thrive and people want to live and work.

WIOA reaffirms the role of the customer-focused one-stop delivery system, a cornerstone of the public workforce investment system, and enhances and increases coordination among several key employment, education, and training programs. Most provisions in WIOA take effect on July 1, 2015, the first full program year (PY) after enactment, although the new State plans and performance accountability system take effect July 1, 2016. Title IV, however, took effect upon enactment.

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thrive and people want to live and work.

WIOA is designed to help job seekers access employment, education, training, and support services to succeed in the labor market and to match employers with the skilled workers they need to compete in the global economy. WIOA has six main purposes: (1) increasing access to and opportunities for the employment, education, training, and support services for individuals, particularly those with barriers to employment; (2) supporting the alignment of workforce investment, education, and economic development systems in support of a comprehensive, accessible, and high-quality workforce development system; (3) improving the quality and labor market relevance of workforce investment, education, and economic development efforts; (4) promoting improvement in the structure and delivery of services; (5) increasing the prosperity of workers and employers; and (6) providing workforce development activities that increase employment, retention, and earnings of participants and that increase post-secondary credential attainment and as a result, improve the quality of the workforce, reduce welfare dependency, increase economic self-sufficiency, meet skill requirements of employers, and enhance productivity and competitiveness of the nation.

Beyond achieving the requirements of the new law, WIOA offers an opportunity to continue to modernize the workforce system, and achieve key hallmarks of a customer centered workforce system, where the needs of business and workers drive workforce solutions, where one-stop career centers and partners provide excellent customer service to job seekers and businesses, where the workforce system pursues continuous improvement through evaluation and data-driven policy, and where the workforce system supports strong regional economies.

Regulations and guidance implementing titles I and III are issued by DOL, with the exception of joint regulations that will be issued by DOL and ED on the provisions in title I relating to unified and combined planning, performance, and the one-stop delivery system. Regulations and

guidance on implementing titles II and IV will be issued by ED.

WIOA retains much of the structure of WIA, but with critical changes to advance greater coordination and alignment. Under title I-A, each State will be required to develop a single, unified strategic plan that is applicable to four core workforce development programs. The core programs consist of (1) the adult, dislocated worker, and youth formula programs administered by the Department under title I of WIOA; (2) the Adult Education and Family Literacy program administered by ED under title II of WIOA; (3) the Wagner-Peyser Act employment services (ES) program administered by the Department, as amended by title III of WIOA; and (4) the vocational rehabilitation (VR) programs under title I of the Rehabilitation Act administered by ED, as amended by title IV of WIOA. In addition to core programs, WIOA provides States the opportunity to include other key one-stop partner programs such as the Supplemental Nutrition Assistance Program (SNAP), Unemployment Insurance (UI), Temporary Assistance for Needy Families (TANF), and Perkins Career Technical Education in a Combined State Plan. The law also includes a common performance accountability system applicable to all of the core programs.

The remainder of WIOA title I authorizes the adult, dislocated worker, and youth formula programs; the State and local workforce development (formerly investment) boards; the designation of regions and local areas; local plans; the one-stop system; national programs, including Job Corps, YouthBuild, Indian and Native American programs, and Migrant and Seasonal Farmworker (MSFW) programs; technical assistance and evaluations; and general administrative provisions currently authorized under title I of WIA. Title II retains and amends the Adult Education and Family Literacy Program currently authorized under title II of WIA. Title III contains amendments to the Wagner-Peyser Act relating to the ES and Workforce and Labor Market Information System (WLMIS), and requires the Secretary to establish a Workforce Information Advisory Council (WIAC). Title IV contains amendments to the Rehabilitation Act of 1973, which were also included under title IV of

WIA; it also requires the Secretary of Labor to establish an Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities. Finally, title V contains general provisions similar to the provisions applicable under title V of WIA as well as the effective dates and transition provisions.

Since the enactment of WIOA, the Department has used a variety of means to coordinate with other Federal agencies that have roles and responsibilities under the Act. The Department works closely with staff at ED and the Department of Health and Human Services (HHS) on all shared policy and implementation matters. Key areas of collaboration include the Unified State Plan, performance reporting, one-stop service delivery, and services to disconnected youth and to individuals with disabilities. WIOA created an opportunity to enhance coordination and collaboration across other Federal programs through the Combined State Plan and the Department meets with the other Federal agencies regarding those plans.

Before publishing the NPRM, the Department solicited broad input through a variety of mechanisms including:

- Issued Training and Employment Notice (TEN) No. 05-14 to notify the public workforce system that WIOA was enacted, accompanied by a statutory implementation timeline, a fact sheet that identified key reforms to the public workforce system, and a list of frequently asked questions.

- Issued TEN No. 06-14 to announce a series of webinars to engage WIOA stakeholders in implementation of WIOA.

- Issued TEN No. 12-14 to provide guidance to States and other recipients of funds under title I of WIA on the use and reporting of PY 2014 funds for planning and implementation activities associated with the transition to WIOA.

- Established a WIOA Resource Page (www.doleta.gov/WIOA) to provide updated information related to WIOA implementation to the public workforce system and stakeholders;
- Established a dedicated e-mail address for the public workforce system and stakeholders to ask questions and offer ideas related to WIOA (DOL.WIOA@dol.gov);
- Conducted, in conjunction with ED and HHS outreach calls, webinars, and stakeholder and in-person town halls in each ETA region. The Department and its Federal partners hosted 10 town halls across the country, reaching over 2,000 system leaders and staff representing core programs and one-stop partners, employers, and performance staff. This included a town hall with Indian and Native American leaders and membership organizations serving Indians and Native Americans, Hawaiians, and Alaskan Natives as well as a formal consultation with members of the Native American Employment and Training Advisory Council to the Secretary of Labor.
- Conducted readiness assessments to implement WIOA in all States and 70 local workforce areas to inform technical assistance.

A. Major Changes from Current Workforce Investment Act of 1998

This section contains a summary of the major changes from the current WIA. As indicated above, WIOA retains much of the structure of WIA.

Major changes in WIOA are:

- **Aligns Federal investments to support job seekers and employers**. The Act provides for States to prepare a single Unified State Plan that identifies a 4-year strategy for achieving the strategic vision and goals of the State for preparing an educated and skilled workforce and for meeting the skilled workforce needs of employers. States govern the core programs as one system assessing strategic needs and aligning them with service strategies to ensure the workforce system meets employment and skill needs of all workers and employers.

- **Streamlines the governing bodies that establish State, regional and local workforce investment priorities.** WIOA makes State and Local Workforce Development Boards more agile and well positioned to meet local and regional employers' workforce needs by reducing the size of the boards and assigning them additional responsibilities to assist in the achievement of the State and local strategic workforce vision and goals. The State Workforce Development Boards (State Boards) continue to have a majority of business representation and a business chair that work for all workers and jobseekers, including low- skilled adults, youth, and individuals with disabilities, while they foster innovation, and ensure streamlined operations and service delivery excellence.

- **Creates a common performance accountability system and information for job seekers and the public.** WIOA ensures that Federal investments in employment, education, and training programs are evidence-based and data-driven, and accountable to participants and the public. It establishes a performance accountability system that applies across the core programs, by generally applying six primary indicators of performance: entry into unsubsidized employment at two points in time, median earnings, attainment of post- secondary credentials, measurable skill gains, and effectiveness in serving employers.

- **Fosters regional collaboration to meet the needs of regional economies**. WIOA promotes alignment of workforce development programs with regional economic development strategies

to meet the needs of local and regional employers.

- **Enhances access to high quality services through the network of one-stop system.** WIOA helps jobseekers and employers acquire the services they need in centers and online, clarifies the roles and responsibilities of the one-stop partner programs, adds the TANF program as a required one-stop partner unless the Governor objects, requires competitive selection of one-stop operators, and requires the use by the one-stop system of a common one-stop delivery identifier or brand that is to be developed by the Secretary of Labor.

- **Improves services to individuals with disabilities.** WIOA stresses physical and programmatic accessibility, including the use of accessible technology to increase individuals with disabilities' access to high quality workforce services.

- **Makes key investments for disconnected youth.** WIOA emphasizes services to disconnected youth to prepare them for successful employment by requiring that a minimum of 75 percent of youth formula program funds be used to help OSY, in contrast to the 30 percent required under WIA. WIOA increases OSYs' access to WIOA services, including pre-apprenticeship opportunities that result in registered apprenticeship. It adds a requirement that at least 20 percent of formula funds at the

  local level be used on work-based training activities such as summer jobs, on-the-job training (OJT), and apprenticeship.

- **Helps Employers Find Workers with the Necessary Skills.** WIOA contributes to economic growth and business expansion by ensuring the workforce system is job-driven—matching employers with skilled individuals. WIOA requires Local Boards to promote the use of industry and sector partnerships that include key stakeholders in an industry cluster or sector that work with public entities to identify and address the

workforce needs of multiple employers.

Additionally, successful implementation of many of the approaches called for within WIOA, such as career pathways and sector strategies, require robust relationships across programs and with businesses, economic development, education and training institutions, including community colleges and career and technical education, local entities, and supportive services agencies.

B. Rule Format

The NPRM format reflects the Department's commitment to writing regulations that are reader-friendly. The Department has attempted to make this NPRM clear and easy to understand. To this end, the regulatory text is presented in a "question and answer" format and organized consistent with the Act. While the Department has provided cross-references to the statute(s), the Department also has included the Act's provisions in the answers for completeness.

While the Department has anticipated many issues that may arise and provided appropriate directions, there are many other areas where the Department continues to weigh

options. Thus, the Department raises questions throughout the preamble where the Department seeks additional information or where the Department is weighing options and seek comments.

C. Legal Basis

On July 22, 2014, the President signed the Workforce Innovation Opportunity Act (WIOA) (Pub. L. 113-128) into law. WIOA repeals WIA (29 U.S.C. 2801 et seq.). As a result, the WIA

regulations no longer reflect current law. Section 503(f) of WIOA requires that the Department issue an NPRM and then a final rule that implements the changes WIOA makes to the public workforce system in regulations. Therefore, DOL seeks to develop and issue a NPRM that proposes to implement WIOA. The Department of Labor will issue regulations regarding the Section 188 Nondiscrimination provisions through separate rulemaking.

III. Section-by-Section Discussion of Proposal

A. Part 603 – Federal-State Unemployment Compensation Program

Disclosure of Confidential Unemployment Compensation Information Under WIOA sec. 116

Relationship between 20 CFR part 603 and WIOA

The Department is amending its regulations at 20 CFR part 603 to help States comply with the WIOA. WIOA requires that States use "quarterly wage records" in assessing the performance of certain Federally-funded employment and training programs.

States must make available performance reports for local areas and for eligible training

providers (ETPs) under title I of the WIOA. WIOA also requires that States cooperate in evaluations, by the Departments of Labor and Education, of State programs overseen by those Federal agencies.

To help States comply with these requirements, the Department has determined that it would be useful to more clearly and specifically, describe in unemployment compensation (UC) confidentiality regulations, the standards for disclosure between the State UC, workforce, and education systems. This proposal amends current regulations to clarify, in a limited fashion, those State government officials with whom the State may share certain confidential information in order to carry out requirements under the law. The regulations enumerate certain additional public officials who may access confidential State wage records that are the basis for the State's performance reporting. Ensuring such access to these State records would allow State agencies to better manage the information for the purpose of making Federally-required reports on certain program outcomes, and to cooperate more effectively and be more informative with respect to Federal program evaluations.

WIOA section (sec.) 116(i)(2) and proposed regulation § 677.175 (a) require State workforce, training, and education programs to use quarterly wage records to measure the progress of the State on State and local performance accountability measures. Under WIA, the Department interpreted the reference to "quarterly wage records" in sec. 136(f)(2) to require States to use the confidential UC information in the employer-provided wage reports collected under sec. 1137 of the Social Security Act (SSA), 42 U.S.C. 1320b-7. (See 20 CFR 677.175.) These are the reports that the State UC agency obtains from employers for determining UC tax liability, monetary eligibility, or for cross-matching against State UC agencies' files to determine if improper payments have been made. The Department adheres to this interpretation in implementing WIOA sec. 116(i)(2).

The "wage information" defined in § 603.2(k)—which the regulations allow State agencies to disclose under limited circumstances—includes the three data categories or elements (wages, SSN(s), employer information) that States must use as their data source for State and local performance reporting under WIOA. The proposed WIOA implementing regulation at 20 CFR 677.175 (b) defines "quarterly wage record information" to include three data elements or categories of data elements: (1) a program participant's SSN(s); (2) information about the wages program participants earn after exiting from the program; and (3) the name, address, State and (when known) the Federal Employer Identification Number (FEIN) of the employer paying those wages. The disclosure of such wage record data is governed by UC part 603 regulations, which establish requirements for maintaining the confidentiality of UC information along with standards for mandatory and permissive disclosure of such information.

Part 603 permits State agencies to disclose confidential UC information—including "wage information"—to "public officials" (defined at § 603.2(d)) under limited circumstances (defined under § 603.5), and authorizes such "public officials," in turn, to use the information to develop Federally-required performance reports.

As explained in greater detail below, the Department proposes changes to § 603.2 (definition of "public official") and § 603.5 (governing disclosures to public officials), to help States comply with WIOA's performance requirements, including the performance reports of the States, local areas, and ETPs. In addition, the Department proposes to amend § 603.6 to add a provision requiring disclosure to implement the new statutory requirement on State cooperation with certain DOL and ED evaluations. These changes would facilitate States' obligations to report on performance through the use of quarterly wage records, and to cooperate in DOL and ED evaluations.

The amendments the Department is proposing to part 603 relate only to State agency

disclosures necessary to comply with certain provisions of WIOA. The Department is not proposing to redefine or expand the confidential State information–the confidential wage records or wage information–that is currently the basis for State performance reporting, and is not proposing to reduce in any way the significant privacy protections and confidentiality requirements that currently govern that information. The Department is not proposing to change any requirements relating to the permissible or mandatory disclosure of confidential UC information for any other purpose, or addressing any general UC issues. We note, in particular, that nothing in these proposed regulations exempts disclosures made under these regulations from the safeguards and security requirements in § 603.9, the requirements in § 603.10 governing agreements, or the requirements for payment of costs under § 603.8(a).

The Department invites comments on our proposed additions to part 603, but will not consider or address comments on part 603 or other UC matters that are outside the scope of this NPRM.

<u>§ 603.2(d)(2)-(5)</u>

Proposed §§ 603.2(d)(2)-(5) expand the definition of who and what entities are considered "public officials" for purposes of complying with WIOA's requirements. Currently,

§ 603.2(d) defines "public official" as "an official, agency, or public entity" in the executive branch of government with "responsibility for administering or enforcing a law," or "an elected official in the Federal, State or local government." Proposed § 603.5(e) allows disclosure to public officials who need the information to carry out their official duties. This exception allows State agencies that collect "wage information" (including the data required for performance reporting under WIOA sec. 677.175) to provide that information to the State agencies

responsible for administering and reporting on the WIOA core programs and mandatory one-stop partner programs. For example, State UC agencies, which are governed by part 603, may disclose confidential UC information to the State adult basic education agency for purposes of performing their official duties, as used in § 603.5(e).

The proposed amendments to § 603.2(d) would clearly enumerate that "public official" includes officials from public post-secondary educational organizations, State performance accountability and customer information agencies, the chief elected officials (CEOs) of local Workforce Development Areas (as that term is used in WIOA sec. 106), and a public State educational authority, agency, or institution. Proposed § 603.2(d)(2) would permit disclosure to public post-secondary educational institutions, regardless of how those institutions are structured or organized under State law. The regulation, as proposed, specifically mentions three categories of institutions. Proposed § 603.2(d)(2)(i) would permit disclosure to public post-secondary educational institutions that are part of a State's executive branch, i.e., derive their authority either directly from the Governor or from an entity (State Board, commission, etc.) somewhere in that line of authority. Proposed § 603.2(d)(2)(ii) would permit disclosure to public post- secondary educational institutions that are independent of the State's executive branch, which means those institutions whose directors derive their authority either directly from an elected official in the State other than the Governor or from an entity (again, a State Board, commission, or other entity) in that line of authority. Proposed § 603.2(d)(2)(ii) covers any public post- secondary educational institution established and governed under State law, for example, a State Board of Regents. Proposed § 603.2(d)(2)(iii) would allow disclosure specifically to State technical colleges and community colleges. (Those institutions may also be covered under (i) or (ii))

Proposed § 603.2(d)(5) permits disclosure to a public State educational authority, agency or institution" as the terms are used in the Family Educational Rights and Privacy Act (FERPA) to

clarify that the Department considers the heads of public institutions that derive their authority from a State educational authority or agency to be "public officials" for purposes of part 603.

The Department proposes these changes to help States comply with WIOA's requirement to use wage records to measure performance (WIOA sec. 116(i)(2)) and to facilitate the performance reporting required for ETPs under secs. 116(d) and 122 of WIOA. WIOA mandates the use of wage records to measure State and local performance. As long as the recipients of the data adhere to all of the requirements in 20 CFR part 603, this proposed section would permit States to make these disclosures to comply with WIOA requirements for Federal, State, or local government reporting on program outcomes and for other specified purposes.

Non-public educational institutions, including non-profit or for-profit educational institutions or other ETPs which are not subject to the authority of the executive branch or another State elected official would not be permitted to obtain confidential UC information, including wage information, under this authority because they are not public entities. Any disclosures of confidential UC information to those entities for purposes of complying with WIOA would have to be authorized under the provisions of § 603.5 other than § 603.5(e). However, it is permissible and encouraged to develop processes or systems, such as the Wage Record Interchange System, to enable a State agency or State educational authority (including a State Education Agency) that collects wage records to match program participant data with wage records, and to provide aggregate participant outcome data to non-governmental educational entities, including ETPs under title I of WIOA.

<u>§ 603.5(e)</u>

Proposed § 603.5(e), as amended, would assist State workforce and State education programs in complying with WIOA, and in particular with WIOA's sec. 116 performance accountability responsibilities, by explicitly stating that confidential UC information may be

disclosed to a "public official" as defined in § 603.2(d)(2) for limited, specified WIOA purposes.

Proposed § 603.5(e), as amended, in conjunction with the revised definition of "public official" under 603.2(d)(2), would enable State UC agencies to disclose confidential UC information to State and local agencies and other public officials authorized to carry out their responsibilities under WIOA for performance accountability, including audits and evaluations of the programs and other required reporting of outcomes, as described in proposed § 603.2(d)(2). To enable States to comply with WIOA, State UI agencies, or other State agencies responsible for collection of wage record information, must collaborate with the entities under WIOA that are required to use wage record data for performance to make the data available pursuant to part 603.

The Department notes that the proposed amendment to § 603.5(e) would permit disclosure to a public official for purposes of performance accountability of the entities on the State's eligible training provider list (ETPL). In addition, disclosure of confidential UC information for other programs' performance accountability purposes (e.g., TANF or SNAP) may be accomplished under existing § 603.5, as these entities are public officials and are performing their public duty, as defined in this section.

A new clause (iii) under proposed § 603.5(e) would permit disclosures "as otherwise required for education or workforce training program performance accountability and reporting under Federal or State law." The Department intends that this provision apply only in the limited instance where a Federal or State law requires performance reporting for which data covered by part 603 is needed in a way that is not covered by the other WIOA-specific provisions. In those instances, this provision would permit a State agency to disclose confidential UC information to a "public official" seeking the information to comply with that statute.

<u>§ 603.6(8)</u>

Proposed § 603.6(8) makes the disclosure of confidential UC information for certain Federal evaluations mandatory when the disclosure would not interfere with the efficient administration of State UC law. The Department proposes this change to § 603.6 to implement the requirement, under WIOA sec. 116(e)(4), that States cooperate, "to the extent practicable," in the conduct of evaluations by either the Secretary of Labor or the Secretary of Education. WIOA sec. 116(e)(4) defines cooperation to include "the provision of data (in accordance with appropriate privacy protections established by the Secretary of Labor)"; this includes 20 CFR

part 603 and any other privacy protections the Secretary may establish. The proposed new regulation at § 603.6(8) would implement these requirements for purposes of providing confidential UC information regulated by part 603. The new regulation would require disclosure of confidential UC information to Federal officials, or their agents or contractors, requesting such information in the course of an evaluation covered by WIOA § 116(e)(4) and 116(e)(1), to the extent that such disclosure is "practicable."

In these cases, the Department interprets "to the extent practicable" to mean that the disclosure would not interfere with the efficient administration of State UC law. This standard is consistent with the standard the regulation applies to disclosures under § 603.5, in situations where the disclosure is permitted but a State must determine, first, that the disclosure would not interfere with the efficient administration of State UC law. In effect, the proposed provision would require that State UC agencies make disclosures to Federal education and labor agencies

carrying out evaluations when it would not interfere with the efficient administration of the State UC law. The Department anticipates this cooperation and related disclosures would include responding to surveys and allowing site visits, as well as disclosure of confidential UC information needed for

the evaluation.

A. Part 675 – Introduction to the Regulations for the Workforce Innovation and Opportunity Systems Under Title I of the Workforce Innovation and Opportunity Act

Proposed part 675 discusses the purpose of title I of the WIOA, explains the format of the regulations governing title I, and provides additional definitions which are not found and defined in the Act.

Proposed § 675.100 describes the purposes of title I of WIOA.

Proposed § 675.200 outlines the structure of the proposed WIOA regulations.

Proposed § 675.300 provides a list of proposed definitions that are applicable across the WIOA regulations.

In addition to the definitions in the WIOA regulations and at secs. 3, 142, 166(b), 167(i), 170(a), 171(b), 203, 302, and 404 of WIOA, proposed § 675.300 provides additional definitions that apply to the programs and activities authorized and funded under title I of WIOA.

Included in this list of definitions, the Department proposes to adopt the following relevant definitions from the Office of Management and Budget's (OMB) "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards" found at 2 CFR part 200: Contract, Contractor, Cooperative Agreement, Federal Award, Federal Financial Assistance, Grant Agreement, Non-Federal Entity, Obligations, Pass-Through Entity, Recipient, Subaward,

Subrecipient, Unliquidated Obligations, and Unobligated Balance. All

other definitions at 2 CFR part 200 apply to these regulations where relevant, but have not been included in this section.

Contract: The proposed definition for "contract" incorporates the definition established by OMB at 2 CFR 200.22. Specifically, the proposed term "contract" refers to the legal document that a non-Federal entity uses to purchase property or services used to carry out its duties under a grant authorized under WIOA. If the Department determines that a particular transaction entered into by the entity is a Federal award or subaward it will not be considered a contract.

Contractor: The proposed definition of "contractor" incorporates the definition contained in OMB's Uniform Guidance at 2 CFR 200.23. The Uniform Guidance has replaced the term "vendor" with the term "contractor." As used in these regulations, the term "contractor" includes entities that the Act refers to as "vendors." Additionally, it is important to note that contractors are not subrecipients. Additional guidance on distinguishing between a contractor and a subrecipient can be found at 2 CFR 200.330.

Cooperative Agreement: The proposed definition of "cooperative agreement" incorporates the definition contained in the Uniform Guidance at 2 CFR 200.24.

Department or DOL: This proposed term refers to the United States DOL, its agencies, and organizational units.

Employment and Training Activity: As used in these regulations, the proposed term "employment and training activity" refers to any workforce investment activities carried out for an adult or dislocated worker under sec. 134 of WIOA and 20 CFR part 678.

Equal Opportunity (EO) Data: This proposed term refers to the data required by the

Department's regulations at 29 CFR part 37 implementing sec. 188 of WIOA.

ETA: This proposed term refers to the ETA, an agency of DOL, or its successor organization.

Federal Award: This proposed definition incorporates the definition in the Uniform Guidance at 2 CFR 200.38.

Federal Financial Assistance: The proposed definition of "Federal financial assistance" incorporates the definition contained in the Uniform Guidance at 2 CFR 200.40.

Grant or Grant Agreement: The proposed definition of "grant agreement" incorporates the definition contained in the Uniform Guidance at 2 CFR 200.51. Because both WIOA and these regulations use "grant" and "grant agreement" interchangabily, the inclusion of both terms here clarifies that the terms are synonymous.

Grantee: The proposed definition of "grantee" refers to a recipient of funds under a grant or grant agreement. Grantees are also referred to as recipients in these regulations.

Individual with a Disability: This proposed definition adopts the definition from sec. 3 of the Americans with Disabilities Act, as amended, and is further defined at 29 CFR 37.4.

Labor Federation: This proposed definition remains unchanged from the definition used in the regulations under WIA at 20 CFR 660.300.

Literacy: The proposed definition for "literacy" as used in these regulations is a measure of an individual's ability to participate and successfully function both in the workplace and in society.

Local Board: This proposed definition clarifies that the term "Local Board" as used in these regulations refers to the Local Workforce Development Boards established under sec. 107 of WIOA.

Non-Federal Entity: The proposed definition of “non-Federal entity” incorporates the definition contained in the Department’s Exceptions to the Uniform Guidance at 2 CFR 2900.2.

Obligations: The definition of “obligations” incorporates the definition contained in the Uniform Guidance at 2 CFR 200.71.

Outlying Area: The proposed term “outlying area” refers to those Territories of the United States which are not within the definition of “State,” including the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and, in certain circumstances, the Republic of Palau.

Pass-through entity: The proposed definition of pass-through entity incorporates the definition in the Uniform Guidance at 2 CFR 200.74.

Recipient: The proposed definition of “recipient,” which is different than the current definition of recipient under WIA at 20 CFR 660.300, incorporates the definition in the Uniform Guidance at 2 CFR 200.86.

Register: The proposed definition of “register” means the point at which an individual seeks more than minimal assistance from staff in taking the next step towards self-sufficient employment. This is also when information that is used in performance information begins to be collected. At a minimum, individuals must provide identifying information to be registered.

Secretary: This proposed term refers to the Secretary of the U.S. DOL, or their officially delegated designees.

Secretaries: This proposed term refers to the Secretaries of the U.S. DOL and the U.S. ED, or their officially designated designees.

Self-Certification: The proposed term “self-certification” refers to the certification made by

an individual that they are eligible to receive services under title I of WIOA.

State: The proposed term "State" refers to each of the several States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

State Board: This proposed definition clarifies that the term "State Board" as used in these regulations refers to the State Boards established under sec. 101 of WIOA

Subgrant or Subaward: This proposed term incorporates the definition of "subaward" in the Uniform Guidance at 2 CFR 200.92. This term replaces the term "subgrant" found in WIA at 20 CFR 660.300. Because both WIOA and these regulations use "subgrant" and "subaward" interchangeably, the inclusion of both terms here clarifies that the terms are synonymous.

Subrecipient: The proposed definition of "subrecipient" incorporates the definition in the Uniform Guidance at 2 CFR 200.93. This term is synonymous with the term "subgrantee."

Unliquidated Obligations: The proposed definition of "unliquidated obligations" incorporates the definition contained in the Uniform Guidance at 2 CFR 200.97.

Unobligated Balance: The proposed definition of "unobligated balance" incorporates the definition in the Uniform Guidance at 2 CFR 200.98.

Wagner-Peyser Act: As used in these regulations, the proposed term "Wagner-Peyser Act" refers to the Wagner-Peyser Act passed on June 6, 1933, and codified at 29 U.S.C. 49, et seq.

WIA Regulations: The proposed term "WIA Regulations" as used in this regulation or subsequently by the Department refers to the regulations 20 CFR parts 660-672. This definition is necessary because, as described in the introduction to these regulations, the Department has chosen to retain the WIA regulations at parts 660-672 of title 20 of the CFR.

WIOA Regulations: This proposed term, as used in this regulation or generally by the Department means those regulations in 20 CFR parts 675 through 687, the Wagner-Peyser Act regulations in 20 CFR part 652, subpart C, and the regulations implementing WIOA sec. 188 in 29 CFR part 37.

Workforce Investment Activities: The proposed term "workforce investment activities" is a general term that describes the broad array of activities and services provided to eligible adults, dislocated workers, and youth under secs. 129 and 134 of title I of WIOA.

Youth Workforce Investment Activity: The proposed term "youth workforce investment activity" refers to those activities carried out for eligible youth that fall within the broad definition of "workforce investment activity."

B. Part 679 – Statewide and Local Governance of the Workforce Innovation and Opportunity System Under Title I of the Workforce Innovation and Opportunity Act

1. Subpart A – State Workforce Development Board

This subpart A sets forth the conditions under which the Governor must establish the State Board.

Proposed §§ 679.100(a)-(e) explain the purpose of the State Board. The State Board represents a wide variety of individuals, businesses, and organizations throughout the State. WIOA is designed to help job seekers and workers access employment, education, training, and support services needed to succeed in the labor market, and match employers with the skilled workers

needed to compete in the global economy. Further, the Department envisions a State Board that takes leadership to ensure that the one-stop system in each State is customer driven. The State Board can help lead this effort by aligning Federal investments in job training, integrating service delivery across programs, and ensuring that the workforce system is job- driven and matches employers with skilled individuals.

The Department envisions that the State Board will serve as a convener of State, regional, and local workforce system partners to enhance the capacity and performance of the workforce development system; align and improve employment, training, and education programs, and through these efforts, promote economic growth.

The State Board must be a strategic convener that promotes partnerships and engages key stakeholders. This role can only be accomplished if each State Board member is an active participant in the business of the board. State Board members must establish a platform in which all members actively participate and collaborate closely with the required partners of the workforce development system, including public and private organizations. This engagement is crucial in the State Board's role to help integrate and align a more effective job-driven workforce investment system that invests in the connection between education and career preparation.

§ 679.100 What is the vision and purpose of the State Board?

A key goal of Federally-funded training programs is to get more Americans ready to work with marketable skills and support businesses to find workers with the skills that are needed. The role of the State Board in achieving this goal includes engaging employers, education providers, economic development, and other stakeholders to help the workforce development system achieve the purpose of WIOA and the State's strategic and operational vision and goals outlined in the

State Plan. The Department encourages the State Board to develop a comprehensive and high-quality workforce development system by working with its workforce, education, business, and other partners to improve and align employment, training, and education programs under WIOA.

The Department encourages the State to take a broad and strategic view when considering representatives of the State Board, and also in establishing processes which it will

use to include necessary perspectives in carrying out State Board functions. For example, alignment of required one-stop partner investments is essential to achieving strategic and programmatic alignment at the State, regional, and local level. Further, States are encouraged to examine factors like the natural bounds of regional economies, commuting patterns, and how economic sectors impact the State, which may benefit from inputs either from formal members of the board, or through other engagement. Further, a broad geographic representation as well as a reflection of diversity of populations within the State is critical.

§ 679.110 What is the State Workforce Development Board?

Proposed § 679.110 describes the membership requirements of the State Board. WIOA sec. 101(b) uses the terms "representative" and "representatives" in several places. In this section the Department interprets "representatives" to mean two or more individuals and "representative" as one individual.

Proposed § 679.110(a) explains that States must establish State Boards in accordance to the requirements of WIOA sec. 101 and these regulations. This proposed section retains the same requirements found at 20 CFR 661.200(a).

Proposed § 679.110(b) generally requires, in accordance with sec. 101(b)(2) of WIOA, that

the State Board membership represent the diverse geographic areas of the State. Employers' and workers' challenges and needs differ among the urban, rural, and suburban areas of the States due to demographics, labor market information and conditions, and business and worker needs and access to the workforce development system. Accordingly, the Department strongly encourages that each category of membership on the Board—the members of the State legislature, business representative, workforce and labor representatives, and State and local officials—represent the diverse geographic areas of the State to ensure that the workforce

development system meets the education, employment, and skill needs of workers, jobseekers, and businesses, no matter their location in the State.

Proposed § 679.110(b)(1) and (2) implement secs. 101(1)(A) and (B) of WIOA by requiring that the board include the Governor of the State and one member of each chamber of the State legislature.

Proposed § 679.110(b)(3)(i)(A) through (C), implementing sec. 101(b)(1)(C)(i) of WIOA, require the majority of State Board representatives to be from businesses or organizations in the State. These representatives must either be the owner or chief executive of the business or be an executive with optimum policy-making or hiring authority as defined in proposed § 679.120. These representatives must also come from businesses or organizations that represent businesses which provide employment and training opportunities that include high- quality, work-relevant training, and development opportunities in in-demand industry sectors or occupations. Work-relevant and development opportunities may include customized training, registered apprenticeship, or OJT. Finally, the Governor must appoint these members based on nominations from business organizations and trade associations in the State. The Department envisions that these members will be individuals that will be able to drive the board to align the workforce investment, education, and economic development systems in support of a comprehensive, accessible, and high-quality

workforce development system.

Proposed § 679.110(b)(3)(i)(D) requires, at a minimum, that one member of the State Board represent small business as defined by the U.S. Small Business Administration. Small businesses are a critical component of and major contributor to the strength of local economies and present new employment opportunities. The Department proposes to require a small business representative because the presence of at least one small business representative on the State Board will allow the board as a whole to more readily receive the unique perspectives, experiences, and needs of small businesses.

Proposed § 679.110(b)(3)(ii)(A) through (D) require that not less than 20 percent of the members of the State Board be representatives of the workforce. Such representatives must include representatives from labor organizations and registered apprenticeship programs within the State, in accordance with sec. 101(b)(1)(ii). This provision maintains WIA's emphasis and requirement that State Board representatives include members of the workforce and labor organizations. The Department anticipates that the inclusion of workforce and labor representatives will foster cooperation between labor and management, strengthening the operation and effectiveness of the State workforce development system. This proposed section also encourages representation from CBOs that have demonstrated experience and expertise, as defined in proposed § 679.120, in addressing the employment, training, or education needs of individuals with barriers to employment across the State including organizations that serve veterans or that provide or support competitive, integrated employment for individuals with disabilities, and organizations that have demonstrated experience and expertise in addressing the employment, training, or education needs of eligible youth, including organizations that serve OSY.

Proposed § 679.110(b)(3)(iii)(A)(1) and (2), implementing WIOA sec. 101(b)(1)(iii)(I),

require the Governor to appoint to the State Board representatives of government that include the lead State officials with primary responsibility for each of the core programs and two or more CEOs that represent both cities and counties, where appropriate. The inclusion of State officials with primary responsibility for each of the core programs and CEOs on the State Board is important so that they can support and improve the service delivery of each core program

through their experience in workforce investment activities and positions as public leaders. This provision also requires that where the State official with primary responsibility for a core program represents more than one core program, that official must ensure adequate representation on the State Board of the needs of all the core programs under their jurisdiction. Additionally, the CEOs must be able to represent their geographic area such as their surrounding cities and counties in the area.

Proposed § 679.110(b)(3)(iii)(B), in accordance with WIOA sec. 101(b)(1)(C)(iii)(II), allows the Governor to designate other representatives and officials to the Board, including but not limited to, representatives and officials such as State agency officials from agencies that are responsible for one-stop partners, State agency officials responsible for economic development or juvenile justice programs, individuals who represent an Indian tribe or tribal organizations, and State agency officials responsible for education programs.

Proposed § 679.110(c), implementing sec. 101(c) of WIOA, requires the Governor to select a chairperson for the State Board from the business representatives on the board. This proposed section retains the same requirements found at 20 CFR 661.200(g).

Proposed § 679.110(d) requires the Governor to establish by-laws that help improve operations of the State Board. Proposed § 679.110(d)(1) through (7) require that at a minimum the

by-laws address the nomination process used by the Governor to select the State Board chair and members, term limitations and how the term appointments will be staggered to ensure only a portion of memberships expire in a given year, the process to notify the Governor of a board member vacancy to ensure a prompt nominee, the proxy and alternative designee process that will be used when a board member is unable to attend a meeting and assigns a designee, brokers relationships with stakeholders, and any other conditions governing appointment or membership

on the State Board as deemed appropriate by the Governor. In addition to these required elements, the Governor must include any additional requirements in the board's by-laws that he or she believes is necessary to ensure the orderly administration and functioning of the board.

An effective State Board establishes clear roles, responsibilities, procedures, and expectations through its by-laws, and that these requirements will help State Boards to be more agile and proactive in reacting to board turnover, increase board participation when board members are not able to physically attend board meetings, improve board functionality, and help ensure that the public is informed about the operation of the board.

Proposed § 679.110(e) requires, as a general condition of State Board membership, that members who represent the non-business organizations, agencies, or other entities described in proposed § 679.110(b)(3)(ii) and (iii) have optimum policy-making authority. Because WIOA sec. 101(d) adds State Board functions, such as identifying and disseminating information on best practices and developing and reviewing statewide policies affecting the coordinated provision of services through the State's one-stop delivery system, all members, not just those representing the business community, should have optimum policy-making authority to accomplish the purposes of WIOA and conduct the State Board required functions.

Proposed § 679.110(f) implements the multiple-entity representation limitations for State

Board members at WIOA sec. 101(b)(3). Robust representation in each of the categories is essential to ensure that the State Board benefits from the diversity and experience of board members.

Proposed § 679.110(f)(1) explains that a State Board member may not represent more than one of the three membership categories: business representatives, workforce representatives, or government representatives. For example, one member could not serve as a

business representative and a joint labor-management apprenticeship program even if the member would otherwise satisfy the criteria for both categories.

Proposed § 679.110(f)(2) explains that a State Board member may not serve as a representative of more than one subcategory under (b)(3)(ii). Under this provision, a single board member could not serve as a representative of an organized labor organization and an apprenticeship program (or the optional subcategories) even if the member would otherwise satisfy the criteria for either category.

Proposed § 679.110(f)(3) prohibits a government representative from serving as a representative of more than one subcategory under (b)(3)(iii). However, where a single government agency is responsible for multiple required programs, the head of the agency may represent each of the required programs. In some instances, it would be appropriate and beneficial for one representative to represent multiple programs on the State Board. For example, the head of a State Workforce Agency might represent both the WIOA title I and Wagner-Peyser programs. This arrangement could serve to improve integration of these two programs and/or help the State Board better achieve the colocation requirements at WIOA sec. 123(c)(3). In other instances, such an arrangement would be less beneficial. For example, where vocational rehabilitation services fall under the State Workforce Agency, appointing a single representative to satisfy the membership requirements of WIOA title I, Wagner-Peyser, and vocational rehabilitation services may limit the

voice and influence of a core program partner.

The Department encourages Governors to use discretion when appointing board members to represent multiple subcategories under (b)(3)(iii).

Proposed § 679.110(g) requires that all required board members have voting privileges and allows the option for the Governor to convey voting privileges to non-required members.

All required board members must have a voice in the State Board's decisions to ensure that the interests of all members of the community represented by the required members are taken into account by the board. Requiring voting rights allows the required board members to have an effect on the State Board's key decisions and initiatives and enables the required board members to effectively represent the individuals and organizations of their communities. This proposed section also permits the Governor to grant voting privileges to the non-required members of the board, and the Department encourages the Governor to do so if doing so, in their opinion, would further the mission and goals of the board.

§ 679.120 What is meant by the terms "optimum-policy-making authority" and "demonstrated experience and expertise"?

Proposed § 679.120(a) defines the term "optimum policy-making authority" as an individual who can reasonably be expected to speak affirmatively on behalf of the entity he or she represents and to commit that entity to a chosen course of action. This proposed section retains the same requirements found at 20 CFR 661.203(a).

Proposed § 679.120(b) defines the term "demonstrated experience and expertise" as an individual who has documented leadership in developing or implementing workforce development, human resources, training and development, or a core program function. WIOA sec. 101(d) adds new State Board functions, such as the development of strategies for aligning technology and data

systems across one-stop partner programs to enhance service delivery and improve efficiencies in reporting on performance accountability measures. This provision will ensure that the State Board will include members that will assist the board in fulfilling these functions. The Department seeks public comment on how to further define "demonstrated

experience and expertise" and examples of the types of qualifications that would meet such a definition.

§ 679.130 What are the functions of the State Board?

Proposed § 679.130 implements sec. 101(d) of WIOA and describes the role and functions of the State Board. Proposed § 679.130(a), (d) through (e), and (g) through (k) reiterate the relevant statutory requirements at secs. 101(d)(1), (4)-(5), and (7)-(11). These functions are the primary functions of the State Board.

Proposed § 679.130 is consistent with WIOA's statutory requirement that the State Board must assist the Governor in the development, implementation, and modification of the 4-year State Plan.

Proposed § 679.130(b) is consistent with WIOA sec. 101(d)(2) and reiterates the statutory requirements. The proposed regulation states the review of statewide policies, programs, and recommendations on actions that must be taken by the State to align workforce development programs to support a comprehensive and streamlined workforce development system. Such review of policies, programs, and recommendations must include a review and provision of comments on the State plans, if any, for programs and activities of one-stop partners that are not core programs.

Proposed § 679.130(c)(1) through (7) are consistent with WIOA secs. 101(d)(3)(A) through

(G) and reiterate WIOA's requirements that the State Board assist the Governor in development and continuous improvement of the State's workforce development system, including removing barriers to aligning programs and activities, developing career pathways to support individuals to retain and enter employment, developing customer outreach strategies,

identifying regions and designating local workforce areas, developing and continuously improving the one-stop system, and developing strategies to train and inform staff.

Proposed § 679.130(d) and (e) reiterate statutory language requiring State Boards to assist in the development of State performance and accountability measures and to identify and disseminate best practices.

Proposed § 679.130(f)(1) through (3) are consistent with WIOA secs. 101(d)(6)(A) through (C) to assist in the development and review of statewide policies on coordinated service provisions, which includes criteria for Local Boards to assess one-stop centers, allocation of one- stop center infrastructure funds, and the roles and contributions of one-stop partners within the one-stop delivery system. In addition, it is important for the State Board to consult with CEOs and Local Boards when establishing objective criteria and procedures for Local Boards to use when certifying one-stop centers. Where Local Boards serve as the one-stop operator, the State Board must use such criteria to assess and certify the one-stop center to avoid inherent conflicts of interest in a Local Board assessing itself.

Proposed § 679.130(g) through (k) reiterate statutory language requiring State Boards to assist in the development of strategies for technological improvements to improve access and quality of service, align technology and data systems across one-stop partner programs to improve service delivery and effectiveness in reporting on performance accountability, develop allocation formulas for distribution of adult and youth programs, and in accordance with WIOA and these

regulations, prepare the annual report and develope the statewide WLMIS.

Proposed § 679.130(l) is consistent with WIOA sec. 101(d)(12). This proposed regulation requires the State Board to assist the Governor in the development of other policies

that promote statewide objectives and enhance the performance of the workforce development system in the State.

§ 679.140 How does the State Board meet its requirement to conduct business in an open manner under "sunshine provision" of the Workforce Innovation and Opportunity Act sec. 101(g)?

Proposed § 679.140 implements sec. 101(g) of WIOA, requires that the State Board conduct its business in an open and transparent manner, and describes several pieces of information that the board is required to provide to ensure transparency.

Proposed § 679.140(b)(1) through (4) requires the State Board to make certain information available on a regular basis to ensure that it is conducting its business in an open manner. Transparency promotes accountability and provides valuable information to citizens on the Federal, State, and local government's activities. Therefore, the State Board must make available to the public on a regular basis, through electronic means and open meetings, information about State Board activities such as the State Plan, modifications to the State Plan, board membership, the board's by-laws, the minutes of meetings. This information must be easily accessed by interested parties. Ensuring that this information is widely available promotes transparency and provides access to the public on how the State Board works to align, integrate, and continuously improve the workforce development system.

§ 679.150 Under what circumstances may the Governor select an alternative entity in place of the State Workforce Development Board?

Proposed § 679.150(a) and (b) implement the requirements of WIOA sec. 101(e)(1) and describe the circumstances by which the Governor may select an alternate entity in place of a State Board. Paragraph (b) lists the conditions that must be met if a State uses an alternative entity in place of the State Board and requires that the entity meets the requirements of § 679.110.

Proposed § 679.150 (c)(1) through (3) stipulate that if the alternative entity does not provide representatives for each of the categories required under WIOA sec. 101(b), the State Plan must explain the manner in which the State will ensure an ongoing role for any unrepresented membership group in the workforce development system. The proposed section further requires that the State Board ensure that the alternative entity maintain a meaningful, ongoing role for unrepresented membership groups, including entities carrying out the core programs, and to inform the Board's actions.

Proposed § 679.150(d) stipulates if the membership structure of the alternative entity had a significant change after August 7, 1998, the entity will no longer be eligible to perform the functions of the State Board. In such a case, the Governor must establish a new State Board which meets all of the criteria of WIOA sec. 101(b).

Proposed § 679.150 (e)(1) and (2) define a significant change in the membership structure which includes a change in the organization of the alternative entity or in the categories of entities represented on the alternative entity which requires a change to the alternative entity's charter or a similar document that defines the formal organization of the alternative entity, regardless of whether

the required change to the document has or has not been made. This proposed section retains the same requirements found at 20 CFR 661.210(e).

Proposed § 679.150(f) stipulates all State Board references in 20 CFR parts 675 through 687 also apply to an alternative entity used by a State. This proposed section implements sec. 101(e)(2) of WIOA.

§ 679.160 Under what circumstances may the State Board hire staff?

Proposed § 679.160 implements sec. 101(h) and describes the board's authority to hire staff. Per proposed § 679.160(c), the pay provided to the director and staff hired by the board is subject to the limitations on the payment of salary and bonuses described in WIOA sec. 194(15).

2. Subpart B – Workforce Innovation and Opportunity Act Local Governance

(Workforce Development Areas)

The WIOA envisions a workforce development system that is customer-focused on both the job seeker and business, and is able to anticipate and respond to the needs of regional economies. It requires Workforce Development Boards and CEOs to design and govern the system regionally, aligning workforce policies and services with regional economies and supporting service delivery strategies tailored to these needs. To support this regional approach, WIOA requires States to identify intrastate and interstate regions which may be comprised of more than one local area, and requires local areas to plan regionally. WIOA envisions a regional system where not only do local areas plan regionally, but workforce system leaders partner and provide leadership as part of comprehensive, regional workforce and economic strategies. This subpart provides the requirements

for designation of regions and local areas under WIOA.

§ 679.200 What is the purpose of a region?

Proposed § 679.200 describes the purpose of requiring States to identify regions: to align workforce development resources to regional economies to ensure coordinated and efficient services to both job seekers and employers. WIOA requires States to establish regions in order to ensure that training and ES support economic growth and related employment opportunities and are meeting the skill competency requirements of the regions. The development of comprehensive regional partnerships facilitates alignment of workforce development activities with regional economic development activities, and better supports the execution and

implementation of sector strategies and career pathways. Regional cooperation may also lower costs and increase the effectiveness of service delivery to businesses that span more than one local workforce development area within a region and to job seekers through coordination of shared services, processes, and operations. The Department encourages States to use these processes to identify any performance, fiscal, or planning challenges and to ensure that local and regional planning areas are aligned to support improved service delivery, improved training and employment outcomes, better meet employer needs, and greater effectiveness and efficiency in achieving these outcomes.

§ 679.210 What are the requirements for identifying a region?

Proposed § 679.210 outlines the requirements for identifying a region.

Proposed § 679.210(a) requires that the Governor assign local areas to a region prior to the submission of the State Unified or Combined Plan.

Proposed § 679.210(b) explains that the Governor must develop a policy for designation of a region prior to submission of the State Unified or Combined Plan, in order to receive WIOA title I-B adult, dislocated worker, and youth allotments. The regional assignment is important because regional economic development areas do not necessarily correspond to State, county, or local workforce development areas, or municipal boundaries.

Proposed § 679.210(b) clarifies the required factors that a Governor must consider when identifying a region and the parties the Governor must consult, implementing WIOA sec. 106(a)(1). The considerations for identifying a planning region are consistent with those for local area designation outlined in proposed § 679.240(a).

Proposed § 679.210(c) provides additional criteria the Governor may consider when identifying regions. These additional criteria, which provide a more comprehensive picture of regional economies and labor markets, provide additional data points to inform the Governor's decision to assign local areas to regions. However, the Department seeks comment on the appropriateness of these factors and requests suggestions of additional data points for defining a regional economy and labor market.

The Department has included "population centers" in proposed § 679.210(c)(1) because they and their contiguous areas of growth are a basic factor distinguishing economic development areas and planning regions.

Proposed § 679.210(c)(2) allows the consideration of "commuting patterns" because commuting pattern data can show the movement of workers from their residence to their workplace.

A strong flow of commuters from one local area, municipality, or county into another is an indication of the economic interdependence of the two areas.

"Land ownership" is included in proposed § 679.210(c)(3) because land ownership can significantly affect the economic development potential of an area.

"Industrial composition" has been proposed as a factor in § 679.210(c)(4) because it is primarily based upon industry employment patterns. The factors used in determining regions could be jobs by industry and share of total employment by industry.

Proposed § 679.210(c)(5) permits the Governor to consider "location quotients," which are ratios that could be computed by dividing a local area's percentage of employment in a particular industry by the State's percentage of employment in a particular industry. The economic base of a local area includes those industries in which the local area has a higher proportion of employment than the State as a whole, or a higher location quotient. Adjacent local areas with similar economic bases are strong candidates for placement in the same region.

"Labor force conditions" is proposed as a factor in § 679.210(c)(6). Local area labor force employment and unemployment data could provide a measure of labor availability throughout the State. Adjacent local areas with similar labor force characteristics, such as unemployment rates, might have similar workforce/economic development needs, thus joining those areas into a region may be beneficial.

Proposed § 679.210(c)(7) suggests that the Governor consider "geographic boundaries" when setting regions because they may serve to facilitate or hinder the movement of people and commerce between areas, thereby naturally delineating regional boundaries.

Finally, proposed § 679.210(c)(8) indicates that the Secretary may suggest additional factors in future guidance.

Proposed § 679.210(d), implementing sec. 106(a)(2) of WIOA, outlines the types of regions and how local areas may be assigned to regions. A region may consist of a single local area, two or more contiguous local areas with a State, or two or more contiguous local areas in two or more States. When the Governor(s) assigns two or more local areas to a region, the region, per WIOA sec. 3(48), is considered a planning region, which is required to coordinate regional service strategies, regional sector initiatives, the collection and analysis of regional labor market data, administrative costs, transportation, partnership with economic develop agencies, and the negotiation of local performance consistent with the regional planning requirements at

§ 679.510. A single local area may not be split across two planning regions. Local areas must be contiguous in order to be a planning region and effectively align economic and workforce development activities and resources. The Department anticipates providing additional guidance regarding the creation and management of interstate planning regions.

§ 679.220 What is the purpose of the local workforce development area?

Distinct from the regional designation, WIOA also provides for local workforce development areas. As described above, these local areas may be identified individually or in combination, as regions. Proposed § 679.220 describes the purpose of the local workforce development area (local area). The Governor must designate local areas in order to receive WIOA title I adult, dislocated worker, and youth allotments, as required by WIOA sec. 106. Local areas serve as a jurisdiction for the administration of workforce development activities and execution of adult, dislocated worker, and youth funds allocated by the State. States allocate workforce investment funds based on various population characteristics of the local area. Local areas may correspond to regions identified in WIOA sec. 106(a)(1) or may be smaller geographic areas within a

planning region, each with its own Local Workforce Development Board.

§ 679.230 What are the general procedural requirements for designation of local workforce development areas?

Proposed § 679.230 describes the procedural requirements that the Governor must use for the designation or redesignation of a local workforce development area. Proposed § 679.220 (a) through (c), implementing WIOA sec. 106(b)(1)(A), requires the Governor to consult with the State Board and CEO, and consider public comments from a wide range of stakeholders consistent with provisions at WIOA sec. 102(b)(2)(e)(iii)(II) as part of the process of identifying the local area. The Governor has the discretion to establish the process and procedures to solicit comments that it determines appropriate; however a wide-reaching, inclusive process allows sufficient time for stakeholders to provide substantive comments that will enable the Governor to receive meaningful feedback from all interested stakeholders, ensuring that the Governor is able

to consider all relevant information, data, and opinions before making a decision to designate or redesignate a local area.

§ 679.240 What are the substantive requirements for designation of local workforce development areas that were not designated as local areas under the Workforce Investment Act of 1998?

Proposed § 679.240 provides the substantive requirements that Governor must use for the designation or redesignation of local workforce development areas.

Proposed § 679.240(a) explains that the Governor must develop a policy for designation or redesignation of local workforce development areas, including the factors that the Governor must consider. The statute requires that the Governor designate local areas that "are consistent" with labor market and regional economic development areas: the Department interprets this to mean that within a local area, there must be common labor markets and economic development areas. Better

integration between the workforce and economic development systems serves to best connect the employment needs of workers with the skilled workforce needs of employers. This section implements sec. 106(b)(1)(B) of WIOA.

Proposed § 679.240(b) permits the Governor to approve a local area designation request from any unit of local government, including a combination of multiple units. This provision implements sec. 106(b)(4) of WIOA and retains the same requirements found at 20 CFR 661.250(c). Proposed paragraph (c) permits the Governor to redesignate a local area that has been designated or redesignated under § 679.240(a) or has been designated under § 679.250(a) or

(c) if the local area requests, and the Governor approves, the redesignation.

§ 679.250 What are the requirements for initial and subsequent designation of workforce development areas that had been designated as local areas under the Workforce Investment Act of 1998?

Proposed § 679.250 describes the requirements for initial and subsequent designation of local areas that had been designated as local areas under WIA.

Proposed § 679.250(a) implements sec. 106(b)(2) of WIOA that requires, during the first 2 full PYs following the enactment of WIOA, a Governor is to approve a request for initial designation from any local area designated as a local area under WIA as long as the entity was designated a local area under WIA, performed successfully, and maintained sustained fiscal integrity for 2 years prior to the enactment of WIOA. This provision requires the Governor to continue the designation of local areas that performed well and maintained sound fiscal practices under WIA. If a local area that was designated under WIA requests initial designation under WIOA but does not meet all of the requirements of § 679.250(a), the Governor has the discretion to approve the initial designation under WIOA or to redesignate the local area pursuant to the procedures described in § 679.240.

Proposed § 679.250(b) clarifies that initial designation applies to PYs 2015 and 2016, as per WIOA sec. 106.

Proposed § 679.250(c), in accordance with sec. 106(b)(3) of WIOA, describes the requirements for the subsequent designation of local workforce development areas that were initially designated under § 679.250(a). Specifically, the Governor must approve requests for subsequent designation as long as the local area performed successfully, sustained fiscal integrity, and in the case of a local area in a planning region, met the planning region requirements during the 2-year period of initial designation. Local areas that are able to

demonstrate successful performance and fiscal integrity must be permitted to continue to operate and may not be redesignated without the consent of the Local Board and CEO in the local area.

Proposed § 679.250(d) describes the role of the Governor in reviewing a local area's subsequent designation. Paragraph (d)(1) permits the Governor to evaluate a local area at any time to ensure the local area continues to meet the requirements for subsequent eligibility at paragraph (c). Paragraph (d)(2) requires the Governor to review local areas to ensure they continue to satisfy the requirements at paragraph (2) as part of each 4-year State planning cycle. Sections 116(g)(2)(A) and 184(b)(1) of WIOA describe the required actions that the Governor must take in the event that a local workforce area fails to meet its negotiated levels of performance or does not comply with administrative requirements, respectively. Under these provisions the Governor retains the authority to take corrective action in light of failure of performance or fiscal management short of redesignation, and is not required to redesignate a local area that has failed to maintain the requirements of paragraph (c). Furthermore, the Governor may redesignate local areas at any time with the cooperation of the CEO and Local Board in a given local area.

Proposed § 679.250(e) presumes that local areas will be considered to have requested

continued designation unless the CEO and the Local Board directly notify the Governor that they no longer wish operate as a local area. This newly proposed paragraph reduces the administrative burden of maintaining local area status, while still holding local areas accountable to the requirements of paragraph (c).

Proposed § 679.250(f) specifies that the requirements for subsequent designation do not apply to local areas that are designated or redesignated under § 679.240 or are single-area States designated under § 679.270.

Proposed § 679.250(g) clarifies that rural concentrated employment programs are not eligible to apply for initial designation as a local area. WIOA allows any unit of local government (or combination of units of local government) to request designation as a local area; however, unlike under WIA, this provision does not extend to rural concentrated employment programs.

§ 679.260 What do the terms "performed successfully" and "sustained fiscal integrity" mean for purposes of designating local areas?

Proposed § 679.260 defines the terms "performed successfully" and "sustained fiscal integrity" used in § 679.250. This section implements sec. 106(e) of WIOA.

Proposed § 679.260(a) defines the term "performed successfully" for the purpose of initial designation to mean that the local area met or exceeded all performance levels the Governor negotiated with Local Board and CEO under WIA sec. 136(c) for the last 2 full PYs before the enactment of WIOA. It also requires that the local area not fail any individual measure for the last 2 consecutive PYs before the enactment of WIOA. Proposed

§ 679.260(a)(1) requires the Governor, in order to determine if a local area has performed successfully, to have defined the terms "met or exceeded" and "failure" at the time the performance levels were negotiated. Proposed § 679.260(a)(2) clarifies that the Governor may not retroactively

apply any higher WIOA threshold to performance negotiated and achieved under WIA for the purposes of local area designation.

Proposed § 679.260(b) defines the term "performed successfully" for the purpose of subsequent designation to mean that the local area met or exceeded the levels of performance the Governor negotiated with Local Board and CEO for core indicators of performance described at WIOA sec. 116(b)(2)(A). It also requires the Governor to have defined the terms "met or exceeded" and "failure" in the State Plan.

Proposed § 679.260(a) and (b) expand on the definition at WIOA sec. 106(e)(1) to ensure that the initial and subsequent designation of local areas is conducted in a fair and transparent manner by ensuring that the local area's performance is judged on the contemporaneous standards agreed to between the State and local area at the time rather than under subsequently imposed performance standards.

Proposed § 679.260(c) defines the term "sustained fiscal integrity" for the purpose of determining initial and subsequent local area designation to mean that the Secretary has not made a formal determination that either the grant recipient or any other entity charged with expending local area funds misexpended such funds due to willful disregard of the requirements of the provision involved, gross negligence, or failure to comply with accepted standards of administration for the 2-year period preceding the determination.

Proposed §§ 679.250 and 679.260 allow for an orderly transition from WIA to WIOA and protects the designation status of local areas that meet or exceed performance targets negotiated in good faith under the relevant authorizing legislation while allowing the Governor both to oversee properly the performance of the local areas and take action necessary to improve the area's performance in a timely fashion.

§ 679.270 What are the special designation provisions for single-area States?

Proposed § 679.270 outlines the special designation provisions for single-area States. Under WIOA sec. 106(d), the Governor of any single-area State under WIA may choose to continue to designate the State as a single-State area. However, proposed § 679.270(b) clarifies that the Governor must identify the single-area status of the State in its Unified or Combined

State Plan and proposed § 679.270(c) further clarifies that the State Board in a single-area State must continue to carry out the functions of the State and Local Boards. This section is intended to clarify single-area States' responsibilities and functions: key local functions, such as monitoring; entering into a memorandum of understanding (MOU) with one-stop partners; selecting one-stop operators; selecting eligible providers of youth activities, career services and training services; and certifying one-stop centers, are essential to the proper functioning of the public workforce system and remain so within single-area States.

§ 679.280 How does the State fulfill the requirement to provide assistance to local areas within a planning region that wish to redesignate into a single local area?

Proposed § 679.280 describes how the State fulfills the requirement to provide assistance to local areas within a planning region that wish to redesignate into a single local area.

Proposed § 679.280(a) asserts that the State must authorize statewide funds for transition activities when all local areas in a planning region petition the Governor for redesignation as a single local area as required by WIOA sec. 106(b)(6). WIOA introduces redesignation assistance as a required statewide activity. This provision will help local areas consolidate where appropriate for the purposes of cost savings and streamlined service delivery.

Proposed § 679.280(b) clarifies that when statewide funds are exhausted in a given PY, the State may fulfill the requirement to provide redesignation assistance in the following PY. This section provides States with the flexibility to balance priorities while ensuring local areas receive redesignation assistance.

Proposed § 679.280(c) provides examples of the activities that local areas may elect to pursue with the redesignation assistance received from the State. However, the State may establish policy on what other activities local areas may use funds received for the purposes of redesignation or leave such determination to the local areas.

§ 679.290 What right does an entity have to appeal the Governor's decision rejecting a request for designation as a workforce development area?

Proposed § 679.290 outlines the appeals process for an entity that submits a request for initial or subsequent designation as a local workforce development area that is rejected by the Governor. This section implements sec. 106(b)(5) of WIOA.

Proposed § 679.290(a) establishes that entities that are not approved as local areas may follow the process established at 20 CFR 683.640. This section is essentially unchanged from WIA. However, while provisions at WIOA sec. 106(b) permit any unit of local government or combination of units to apply for designation as a local area, the law does not specify that rural concentrated employment programs may apply for designation as a local area. The intent of this section was to prohibit such an arrangement under WIOA and that this prohibition logically applies to the appeals process.

Proposed § 679.290(b) establishes that an entity making an unsuccessful appeal to the State Board may request a review of the appeal by the Secretary of Labor if the State does not respond to the appeal in a timely manner or if the appeal for designation is denied by the State. The Department

defines a 'timely manner' to be 60 days after the submission of the appeal. This provides adequate time for the State to review and make a ruling on the appeal while not being so long as to delay unreasonably the appeal and designation processes.

Proposed § 679.290(c) summarizes the circumstances under which the Secretary of Labor may require an entity to be designated as a local area. Specifically, the Secretary may require designation upon a finding of either a denial of procedural rights or a finding that the area meets the requirements for designation. This section was updated from WIA to reflect that neither the 'automatic' nor 'temporary and subsequent' designation statuses exist under WIOA.

3. Subpart C – Local Boards

§ 679.300 What is the vision and purpose of the Local Workforce Development Board?

Proposed § 679.300 explains the purpose of the Local Board. The Local Board represents a wide variety of individuals, businesses, and organizations throughout the local area. The Local Board serves as a strategic convener to promote and broker effective relationships between the CEOs and economic, education, and workforce partners.

The Local Board must develop a strategy to continuously improve and strengthen the workforce development system through innovation in, and alignment and improvement of, employment, training, and education programs to promote economic growth. Local Board members must establish a platform in which all members actively participate and collaborate closely with the required and other partners of the workforce development system, including public and private organizations. This is crucial to the Local Board's role to integrate and align a more effective, job-

driven workforce investment system.

Proposed § 679.300(b)(1) and (2) outlines the purposes of the Local Board. A key goal of Federally-funded training programs is to prepare job seekers ready to work with marketable skills. This includes providing strategic and operational oversight in collaboration with required and other partners to help the workforce development system achieve the purposes outlined in WIOA sec. 2, and assist in the achievement of the State's strategic and operational vision and goals outlined in the State Plan. The Local Board must work to develop a comprehensive and high-quality workforce development system by collaborating with its workforce and education partners to improve and align employment, training, and education programs under WIOA.

§ 679.310 What is the Local Workforce Development Board?

Proposed § 679.310 defines the Local Workforce Development Board. Proposed

§ 679.310(a) explains that the CEO in each local area appoints the Local Board in accordance with WIOA sec. 107(b) and that the Governor must certify the Local Board on a biannual basis. This proposed section retains the same requirements found at 20 CFR 661.300(a).

Proposed § 679.310(b) describes that the Local Board sets policy within the local area in partnership with the CEO, consistent with State policy. This proposed section retains the same requirements found at 20 CFR 661.300(b).

Proposed § 679.310(c), asserts that the CEO may enter into an agreement with the Local Board that describes the respective roles and responsibilities of the parties. However, the CEO remains liable for funds received under title I of WIOA unless they reach an agreement for the

Governor to act as the local grant recipient and bear such liability. This proposed section retains the same requirements found at 20 CFR 661.300(c).

Proposed § 679.310(d) describes that the Local Board, in partnership with the CEO, are responsible for the development of the local plan. This proposed section retains the same requirements found at 20 CFR 661.120(d).

Proposed § 679.310(e) affirms that in local areas with more than one unit of general local government, the CEOs of the respective units may execute an agreement to describe their responsibilities for carrying out their roles and responsibilities. If the various parties cannot come to an agreement, the Governor may appoint the Local Board. This proposed section retains the same requirements found at 20 CFR 661.300(3).

Proposed § 679.310(f) indicates that in single-State areas, the State Board must fulfill the functions of the Local Board, which the Department also required under the WIA regulation at

20 CFR 661.300(f). As required by WIOA sec. 107(c)(4)(B)(iii), the proposed section clarifies that the State is not required to establish or report on local performance measures. This clarification presents a logical approach to local performance because the local area performance will be reflected in the State performance reports.

Proposed paragraph (g) requires the CEO to establish by-laws, consistent with State policy, that help improve operations of the Local Board. Proposed § 679.310(g)(1) through (7) require that at a minimum the by-laws address the nomination process used by the CEO to elect the Local Board chair and members, term limitations and how the term appointments will be staggered to ensure only a portion of memberships expire in a given year, the process to notify the CEO of a board member vacancy to ensure a prompt nominee, the proxy and alternative designee process that will be used when a board member is unable to attend a meeting and assigns a designee, the use of technology to

improve board functions, brokers relationships with stakeholders, and any other conditions governing appointment or membership on the Local Board as deemed appropriate by the CEO. In addition to these required elements, the CEO must include any additional requirements in the board's by-laws that it believes is necessary to ensure the orderly administration and functioning of the board. An effective Local Board establishes clear roles, responsibilities, procedures, and expectations through its by-laws, and that these requirements will help Local Boards to be more agile and proactive in reacting to board turnover, increase board participation when board members are not able to physically attend board meetings, improve board functionality, and help ensure that the public is informed about the operation of the board.

§ 679.320 Who are the required members of the Local Workforce Development Board?

Proposed § 679.320 explains that the CEO in a local area must appoint a Local Workforce Development Board and provides guidelines on requirements and options for the CEO to follow in appointing members to the Local Board.

Proposed § 679.320(b) requires that a majority of the Local Board members must represent businesses as per WIOA sec. 107(b)(2)(A). Business representatives include owners, chief executive or operating officers, and other business executives, including small businesses, and business organizations. As reflected in proposed paragraph (b)(2), WIOA requires that business representatives on the Local Board must represent business that provide employment opportunities in in-demand industry sectors or occupations as defined in WIOA sec. 3(25).

Employers with employment opportunities in high-growth sectors are uniquely suited to communicate the emerging workforce needs of employers in these high-growth, in-demand sectors to the Local Board.

Proposed § 679.320(c) explains the required and optional member categories that must make up at least 20 percent of the Local Board membership representing labor organizations, or where they do not exist, employee representatives. Proposed paragraphs (c)(1) and (2) require that the Local Board must include two or more representatives of labor organizations (or other employee representatives if there are no labor organizations operating in the local area) and one or more representatives of a joint-labor management registered apprenticeship program (or other registered apprenticeship program if there is no joint labor-management program in the local area). The use of the word 'representatives' with respect to labor organization membership indicates a requirement for two or more members. In areas with joint apprenticeship programs, the apprenticeship representative must be a member of a labor organization or a training director.

In addition to these required members, proposed paragraphs (c)(3) and (4) explain that the CEO may appoint one or more representatives of CBOs with experience in addressing the employment needs of individual barriers to employment including organizations that serve veterans or that provide or support competitive integrated employment for individuals with disabilities, and one or more representative of organizations with experience addressing the employment needs of WIOA-eligible youth, including serving OSY. While not mandatory, the two representative categories in proposed paragraphs (c)(3) and (4) count towards reaching the 20 percent threshold. Proposed § 679.320(c) underscores both the importance of registered

apprenticeship, a proven training strategy that effectively meets the needs of both employers and workers,[1] and the role of organized labor in workforce development, particularly in developing registered apprenticeship programs.

Proposed § 679.320(d)(1) and (2) describe the entities required to be on the board to provide an adult education perspective and representation. These sections require that Local Boards include a minimum of one member with experience providing adult education and literacy activities under

title II of WIOA and at least one member from a higher education institution, which may include community colleges, that provides workforce training.

Proposed paragraph (d)(3) sets forth the statutory requirement that a minimum of one Local Board member must be included from each of the following organizations: economic or community development organizations, the State ES Office under Wagner-Peyser serving the local area, and programs carried out under title I of the Rehabilitation Act of 1973 (29 U.S.C. 720, et seq.) other than sec. 112 or part C of that title.

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[1] Ibid; and Kleinman, Liu, Mastri, Reed, Reed, Sattar, & Ziegler (2012). An Effectiveness Assessment and Cost- Benefit Analysis of Registered Apprenticeship in 10 States. Mathematica Policy Research. Prepared for the U.S. Department of Labor, Employment and Training Administration.

Proposed § 679.320(e) provides examples of other appropriate optional members of the board. In addition to the entities described in (e)(1) through (3), proposed paragraph (e)(4) explains that the CEO may appoint other individuals to the board at his or her discretion. This provides the CEO the flexibility to assemble a Local Board that connects all key resources and stakeholders.

Proposed § 679.320(f) requires that Local Board members possess optimum policy-making authority in the organizations they represent. This proposed section retains the same requirements found at 20 CFR 661.315(c).

Proposed § 679.320(g) explains the nomination criteria for business and labor representatives, as well as representatives of adult education and literacy activities under title II when there are multiple institutions providing these services in a local area. These nomination

requirements are unchanged from the requirements at 20 CFR 661.315(e), however, a formal policy ensures that business and labor organizations are provided the opportunity to provide input on board member selection. When there is more than one local area provider of adult education and literacy activities under title II, or multiple institutions of higher education providing workforce investment activities as described in WIOA 107(b)(2)(C)(i) or (ii), the CEO must solicit nominations from those particular entities. This requirement provides for a representative selection process for these membership categories.

Proposed § 679.320(h) explains that an individual may be appointed as a representative of more than one entity if the individual meets all the criteria for representation, including the criteria described in paragraphs (c) through (g) of this section, for each entity. While such "multiple entity" representation may not be appropriate in all cases, the Department proposes to allow an individual to represent more than one entity, because there may be instances when such

representation may be an effective tool for reducing board size while still ensuring that all entities entitled to representation receive effective representation.

Proposed § 679.320(i) explains that all required board members must have voting privileges and that the CEO may give voting privileges to non-required members. Voting rights allow the required board members to have an effect on the Local Board's key decisions and initiatives. This will enable the required board members to effectively represent the individuals and organizations of their communities.

§ 679.330 Who must chair a Local Board?

Proposed § 679.330 affirms that the Local Board must elect a chairperson from the business representatives on the Local Board. This proposed section retains the same requirements

found at 20 CFR 661.320.

§ 679.340 What is meant by the terms "optimum policy-making authority" and "demonstrated experience and expertise"?

Proposed § 679.120 explains what is meant by "optimum policy-making authority" and "demonstrated experience and expertise" for members of the Local Board under sec. 107(b)(5) of WIOA. Proposed paragraph (a) defines an individual with "optimum policy-making authority"

as someone who can reasonably be expected to speak affirmatively on behalf of the entity he or she represents and to commit that entity to a chosen course of action. In order for the decisions of the board to have the greatest possible impact, all board members must be able to speak authoritatively when committing their organization to a decided course of action.

Proposed paragraphs (b)(1) through (3) define the qualifications that satisfy the "experience and expertise" requirement for Local Board members. The CEO has a duty to

appoint only those board members that have the skills and practical knowledge to contribute fully to the strategic vision of the local area's workforce system.

§ 679.350 What criteria will be used to establish the membership of the Local Board?

Proposed § 679.350 affirms that the CEO appoints the Local Board in accordance with the criteria in WIOA sec. 107(b) and applicable State criteria. This proposed section retains the same requirements found at 20 CFR 661.325.

§ 679.360 What is a standing committee, and what is its relationship to the Local Board?

Proposed § 679.360 establishes the roles and responsibilities of standing committees within the Local Board structure. Such committees were not legislated in the past, are optional under WIOA, and may be used to assist the Local Board in carrying out its responsibilities as outlined in WIOA sec. 107. The Department encourages the use of standing committees to expand opportunities for stakeholders to participate in board decision-making, particularly for representatives of organizations that may no longer sit on the Local Board but continue to have a stake in the success of board decisions. Such committees also expand the capacity of the board in meeting required functions.

Proposed paragraph (a) expressly authorizes Local Boards to establish standing committees that include individuals who are not formal members of the board, but who have expertise to advise on issues that support the board's ability to attain the goals of the State, local and regional plans, and the objective of providing customer-focused services to individuals and businesses. The subpart provides examples of areas where standing committees may be particularly beneficial, including serving targeted groups of customers such as individuals with disabilities and youth, and addressing one-stop system issues.

Proposed paragraph (b) provides for Local Board discretion in terms of what kinds of standing committees, in any, the Local Board creates.

Proposed paragraph (c) allows Local Boards to designate an entity in existence on the date that WIOA was enacted, such as an effective youth council, to fulfill the requirements of a standing committee as long as the entity meets the requirements outlined in paragraph (a).

§ 679.370 What are the functions of the Local Board?

Proposed § 679.370 provides the functions of the Local Boards as enumerated in statute.

Under WIOA, the Local Board, in partnership with the CEO, must perform a variety of functions to support the local workforce system. Many of these functions have been expanded and enhanced under WIOA. Proposed § 661.305(a), (c), (d), (g), (h), (j), (o), and (p) reiterate the relevant statutory requirements at WIOA secs. 107(d)(1) through (3), (6), (7), (9), (12), and (13); no further discussion of these provisions is provided below.

Proposed paragraph (b) discusses a new role for Local Boards that are part of a planning region that includes multiple local areas. This regulation repeats the new statutory requirement that Local Boards that are part of a planning region must develop and submit a regional plan in collaboration with the other Local Boards in the region. Under WIOA, the local plan is incorporated into the regional plan, where required, in accordance with § 679.540.

Proposed paragraph (e) explains the role of the Local Boards in engaging employers, promoting business representation on the board, and developing and implementing proven or promising strategies for meeting the needs of employers and workers (like industry or sector partnerships) and providing linkages and coordination among employers and the workforce system. It enhances the Local Board's role in engaging employers beyond what was required by WIA by requiring the board to develop and implement promising strategies for meeting the

employment skill needs of workers and employers. Engaging employers presents an opportunity to meet the local area's labor market and workforce development needs and connect customers seeking jobs or career advancement to greater employment prospects.

Proposed paragraph (f) requires the Local Board to connect with representatives of secondary and post-secondary education programs in the local area in order to develop and implement career pathways. This regulation supports the statute's focus on career pathways.

Proposed paragraph (i) enhances the oversight role of the Local Board beyond what was

required in WIA. It requires the Local Board to conduct oversight, in partnership with the CEO, of the use and management of funds, including ensuring the appropriate management and investment of funds to maximize performance outcomes under WIOA sec. 116.

Proposed paragraph (k) requires that the Local Board must negotiate with CLEO and required partners on the methods for funding the infrastructure costs of one-stop centers in the local area in accordance with § 678.715. This provision ensures each partner in the one-stop system is provided resources equitably.

Proposed paragraph (l) also expands and enhances the Local Board's role in the selection of eligible service providers in the local area which must be conducted consistent with 2 CFR part 200. The regulation maintains the board's role in the identification of eligible providers of youth workforce investment activities, but now requires, consistent with WIOA sec.

107(d)(10)(B), that this identification be accomplished through the award of grants or contracts on a competitive basis. It also adds that the recommendations of the youth standing committee, if one is established, must be taken into account. It also indicates that the Local Board must identify eligible providers of career services through the award of contracts, if the one-stop operator does not provide such services. This provision does not impact those services provided

by State merit staff. The final proposed expansion in this subpart is the requirement that Local Boards select one-stop operators through the competitive process described in §§ 678.600 through 678.635.

Proposed paragraph (m) describes the requirement that the Local Board work with the State to ensure that there are sufficient numbers and types of providers of career and training services in the local area so that consumer choice and opportunities for employment for individuals with disabilities are maximized.

Proposed paragraph (n) reflects a number of new functions for the Local Board related to coordination with adult education and literacy providers in the local area. The regulation requires the Local Board to review applications to provide adult education and literacy activities under title II to determine whether such applications are consistent with the local plan. It also requires the board to make recommendations to the eligible agency to promote alignment with the local plan. Further information regarding Local Board coordination with adult education and literacy providers is provided at 34 CFR 463 which requires the eligible agency to establish in its competition, a processes by which applicants must submit an application to the Local Board for review prior to its submission to the eligible agency. This subpart also includes a role for the board in replicating and implementing cooperative agreements in accordance with subparagraph

(B) of sec. 101(a)(11) of the Rehabilitation Act of 1973 (29 U.S.C. 721(a)(11)), and implementing cooperative agreements in accordance with that section with the local agencies administering plans under title I of that Act (29 U.S.C. 720 et seq.) (other than sec. 112 or part C of that title (29 U.S.C. 732, 741) to enhance the provision of services to individuals with disabilities and other individuals.

Proposed paragraph (q) requires the Local Board to certify one-stop centers in accordance with § 662.600.

§ 679.380 How does the Local Board satisfy the consumer choice requirements for career services and training services?

Proposed § 679.380 describes how the Local Board satisfies the consumer choice requirements for career services and training services. While WIA required the Local Board to maximize consumer choice for training services, consumer choice for career services is a new requirement under WIOA. Clarification of the board's role will minimize confusion for one-stop managers and frontline staff.

Proposed paragraphs (a)(1) through (3) describe the process of how the Local Board assists the State Board in identifying providers, ensures a sufficient number of providers, and provides performance and cost information through the one-stop system.

Proposed paragraphs (b)(2)(i) and (ii) describe how the Local Board satisfies the requirement to provide consumer choice for career services. In general, the Local Board must decide which services are best provided by the one-stop operator and which services may require a contracted provider. Furthermore, these paragraphs require the board to identify a wide range of services based on the needs in the local area with special attention to services for individuals with disabilities and literacy services. Requiring the board to identify a wide array of potential career service providers, while still allowing the board to ultimately determine the career service providers, balances board flexibility and customer choice. There is no requirement to provide customers with a choice of providers for a given career service.

§ 679.390 How does the Local Board meet its requirement to conduct business in an open manner under the "sunshine provision" of the Workforce Innovation and Opportunity Act?

Proposed § 679.390 maintains the Local Board's requirement to conduct business in an open manner, but expands on the scope of what the public must be made aware of and requires that information be shared by electronic means as well as through open meetings as provided for in WIOA sec. 107(e). These new requirements facilitate the transparent functioning of the board and contribute to smoother board operations. This can only be accomplished by each Local Board member actively participating during Local Board meetings, and by developing effective by-laws that outline the nomination process, which includes steps for a prompt nominee during a vacancy, term limitations, and encourage the use of technology and active participation.

§ 679.400 Who are the staff to the Local Board and what is their role?

Proposed § 679.400 describes the Local Board's authority to hire staff and the appropriate roles for board staff. This proposal clarifies and differentiates the staff's role and requires the Local Board to hire only qualified staff.

Proposed paragraph (a) authorizes the board to hire a director and other staff. The volunteer board may not have the capacity to fulfill the required board functions at WIOA sec. 107(d). Board support ensures these functions are achieved.

Proposed paragraph (b) requires the board to apply objective qualifications to the board director. It is in the best interest of the public workforce system to ensure the director of the board is competent and experienced with workforce programs and service delivery.

Proposed paragraph (c) limits the board staff's role to assisting the board fulfill the functions at WIOA sec. 107(d) unless the entity selected to staff the board enters into a written agreement with the board and CEO as noted in paragraph (e) and described more fully in

§ 679.430 of this part. The reasons that the Department proposes to require a written agreement if the staff provide functions outside of those in WIOA sec. 107(d) are discussed in the preamble to § 679.430 of this part.

Proposed paragraph (d) requires Local Boards that elect to hire a director to establish objective qualifications to ensure that the selected candidate possesses the knowledge and skills to assist the board in carrying out its functions.

Proposed paragraph (e) limits the payment of the Local Board director and board staff to the basic pay rate for level II of the Executive Schedule under sec. 5313 of title 5, U.S.C. This requirement ensures that board staff are compensated at a reasonable level.

§ 679.410 Under what conditions may a Local Board directly be a provider of career services, or training services, or act as a one-stop operator?

Proposed § 679.410 explains the situations in which the Local Board may directly act as a one-stop operator, a provider of career services or training services. Proposed § 679.410(a)(1)(i) and (ii) establishes that a Local Board may act as a one-stop operator where a Local Board successfully participates in a competition or if the board meets the criteria for sole source procurement. Under both circumstances, as required by proposed § 679.410(a)(2), implementing WIOA sec. 107(g)(2), the Governor and CEO must agree to such selection. This clarifies the interaction between sec. 122(d)(2)(A) of WIOA, which requires that Local Boards select a one- stop operator through a competitive process, and WIOA sec. 107(g)(2), which states that a Local Board can be designated as a one-stop operator only with the agreement of the Governor and CEO in the local area. One interpretation of sec. 107(g)(2) is that Local Boards, with approval of the Governor and CEO, could be selected as one-stop operators without undergoing a competitive process. However, such a non-competitive selection is only appropriate after a

competitive process has been conducted as required by WIOA sec. 122(d)(2)(A). The Department welcomes comments regarding this interpretation.

Proposed § 679.410(a)(3) also requires that where a Local Board acts as a one-stop operator, the State must ensure certification of one-stop centers. Local Boards are required to certify one-stop centers; however, States must fulfill that role when a Local Board acts as a one- stop operator to avoid conflicts of interest with a Local Board certifying its own performance.

Proposed § 679.410(b) provides that a Local Board may act as a provider of career services only with the agreement of the CEO in the local area and the Governor. The Department interprets WIOA sec. 107(g)(2) to operate as a general exception from the requirement that the Local Board

award contracts to providers of career services consistent with 2 CFR part 200. A Local Board acting as a direct provider of services is not optimal, as the Local Board is designed to oversee the one-stop system and its services, not provide them.

However, unlike the selection of one-stop operators, which are statutorily required to be competitively selected, there is no similarly clear statutory requirement for providers of career services. Therefore, the Department does not propose to require that a competition fail before the Local Board may provide career services.

Proposed 679.410(c) specifies that a Local Board is prohibited from providing training services unless the Governor grants a waiver in accordance with WIOA sec. 107(g)(1). Proposed § 679.410(c)(1) requires the State to develop a procedure to review waiver requests received from Local Boards and the limitations of the waiver that incorporates the criteria listed at WIOA sec. 107(g)(1)(B)(i). While WIA contained provisions for a similar waiver, it did not include any such criteria. The intent of this waiver is to provide the option for Local Boards to provide training services in extenuating circumstances only, such as rural areas with limited training providers. A formal procedure facilitates transparency and clarity regarding the criteria for the training waiver and ensures that any Local Board that applies is subject to the same criteria.

Furthermore, the new criteria underscore that the waiver is not appropriate for local areas that have a robust network of training providers.

Proposed § 679.410(c) indicates that the local area must make the request to be designated as a training provider available through public comment for a period of 30 days or more and include those comments in the local area's final request to the State. The proposed section also outlines the timeline for approval and Governor's authority to revoke a waiver if the Governor determines it is no longer needed or the Local Board demonstrates a pattern of inappropriate referrals. This

proposed section helps ensure that the local area is acting in good faith when asserting that there are insufficient providers in the local area and protects against a conflict of interest.

Proposed § 679.410(d) affirms that the general prohibitions that apply to Local Boards directly providing career services or training services also apply to board staff.

§ 679.420 What are the functions of the local fiscal agent?

Proposed § 679.420 describes the role of the local fiscal agent when the CEO in a local area elects to designate a fiscal agent. While the term 'fiscal agent' was widely used under WIA, the term was never defined, which led to inconsistent understanding of their role and function throughout the workforce system. This section clarifies the role of a fiscal agent to create a common understanding of that role.

Proposed paragraph (a) describes that the CEO or the Governor, where the Governor serves as the local grant recipient for a local area, may designate an entity to serve as a local fiscal agent.

Proposed paragraph (b) provides a list of the key functions of a fiscal agent. The appropriate role of fiscal agent is limited to accounting and funds management functions rather than policy or service delivery. Proposed fiscal agent functions include those listed in paragraphs (b)(1) through (6) and (c) provide additional potential functions for single State areas. The Department requests comment from State and local stakeholders regarding appropriate functions for a fiscal agent.

§ 679.430 How do entities performing multiple functions in a local area demonstrate internal controls and prevent conflict of interest?

Proposed § 679.430 clarifies how entities performing multiple functions in a local area

demonstrate internal controls and prevent conflict of interest. This proposed provision requires a written agreement with the Local Board and CEO when a single entity operates in more than one of the following roles: local fiscal agent, Local Board staff, one-stop operator, or direct provider of career services or training services. The proposed paragraph clarifies how the organization will carry out its responsibilities while demonstrating compliance with WIOA and corresponding regulations, relevant OMB circulars, and the State's conflict of interest policy. While it may be appropriate in some instances for a single organization to fulfill multiple roles, a written agreement between the Local Board, CEO, and the organization fulfilling multiple roles is the best method to limit conflict of interest or the appearance of conflict of interest, minimize fiscal risk, and develop appropriate firewalls within a single entity performing multiple functions.

4. Subpart D – Regional and Local Plan

WIOA provides designated regions and local workforce areas the responsibility and opportunity to develop employment and training systems tailored specifically to regional economies. These systems must meet the needs of the full range of learners and workers,

including those with barriers to employment. The system must also address the specific needs of regional employers and the skills they require. WIOA requires the Local Board, in partnership with the CEO, to submit a local plan to the Governor. If the local area is part of a planning region, the Local Board will submit its local plan as part of the regional plan and will not submit a separate local plan. The local or regional plan provides the framework for local areas to define how their workforce development systems will achieve the purposes of WIOA. The regional or local plans serve as 4-year action plans to develop, align, and integrate the region and local area's job-driven workforce development systems, and provides the platform to achieve the local area's visions and

strategic and operational goals. Since the local plan is only as effective as the partnerships that operationalize it, it must represent a collaborative process among local elected officials, boards, and required and other partners (including economic development, education, and private sector partners) to create a shared understanding of the local area's workforce investment needs, a shared vision of how the workforce investment system can be designed to meet those needs, and agreement on the key strategies to realize this vision.

§ 679.500 What is the purpose of the regional and local plan?

Proposed § 679.500 describes the purpose of the regional and local plans. Proposed

§ 679.500(a)(1) through (4) explain that the local plan is the primary vehicle for communicating the Local Board's vision for the local workforce system and aligning and integrating local service delivery across Federal programs in a region to foster better alignment of Federal investments in job training, integrate service delivery across programs, and ensure that the workforce system is job-driven and matches employers with skilled individuals. Proposed

§ 679.500(b) clarifies that when a State-designated region encompasses two or more local areas, the regional plan must meet the purposes of the local plan and coordinate resources across the

region and across local areas. This approach is intended to align resources between multiple Local Boards.

§ 679.510 What are the requirements for regional planning?

Proposed §§ 679.510, 679.520, and 679.530 describe the required contents of the regional plan, the approval process, and when the regional plan must be modified. While sec. 106(c) of WIOA clearly describes the required contents of the regional plan, it provides less detail about the approval and modification process, saying only that officials in the planning region must "prepare, submit, and obtain approval" of the plan. Because the local plan is a component of the regional plan, the Department has decided to apply the approval and modification requirements, including the requirement to seek public comment and sunshine provision, to the regional plan.

Proposed § 679.510 implements sec. 106(c) of WIOA and describes the State and local requirements for regional planning. Proposed § 679.510(a)(1) requires Local Boards and CEOs to participate in a regional planning process. In some instances, where a single local workforce development area comprises a region, the local area will carry out its planning in this context.

Proposed § 679.510(a)(2) describes the regional plan contents and submission process.

The Local Boards and CEOs must submit a regional plan to the Governor for approval that includes the activities listed at proposed § 679.510(a)(1) and incorporates the local plans developed for each local area. Local areas are not required to submit an additional local plan outside of the regional planning process. The coordination required for regional planning is an effective method for local areas to identify areas of efficiency, coordinate effective practices, and streamline service delivery. While the regional plan requires coordination of local performance negotiations with the State, each CEO, as required by § 677.210(b) and (c) will negotiate

performance goals with the State and will remain ultimately responsible for ensuring that the local area meets or exceeds those goals.

Proposed § 679.510(b) requires Local Boards to make the regional plan available for

comment before submitting the plan to the Governor and describes the steps necessary to ensure adequate public comment. This requirement provides all affected entities and the public an opportunity to provide input to inform plan development.

Proposed § 679.510(b)(5) specifically requires the public comment process to be consistent with the 'sunshine provisions' at WIOA sec. 107(e), which requires that the Local Boards must make the plan available through electronic means and open meetings. This requirement ensures greater transparency in the planning process, and encourage regions to consider efforts to maximize the transparency and inclusiveness of the process.

Proposed § 679.510(c) requires the State to provide technical assistance and labor market data to facilitate regional planning. Because States possess a broader understanding of labor market information across jurisdictions and tools for analysis that individual local areas may not possess, States have a responsibility to provide and instruct local areas on the effective use of regional labor market information.

§ 679.520 What are the requirements for approval of a regional plan?

Proposed § 679.520 describes the approval of the comprehensive 4-year regional plan. This section requires that the Governor review completed plans and stipulates that unless the Governor determines that any of the conditions described in proposed paragraphs (a) through (c) are met the plan will be considered approved 90 days after submission of the plan to the Governor.

§ 679.530 When must the regional plan be modified?

Proposed § 679.530 describes when a regional plan must be modified. Proposed

§ 679.530(a) requires the Governor to establish procedures governing regional plan modification, which will help ensure that the biannual modification of regional plans is conducted consistently throughout the State.

Proposed § 679.530(b) explains that the Local Boards and appropriate CEOs in the planning region must review the regional plan every 2 years and submit a modification based on significant changes in labor market and economic conditions and other factors including changes to local economic conditions, and any changes in the financing available to support WIOA title I and partner-provided WIOA services. This proposed requirement helps ensure that planning regions use their plans to drive economic development, sector, career pathway, and customer- focused service delivery strategies.

§ 679.540 How are local planning requirements reflected in a regional plan?

Proposed § 679.540 outlines how local planning requirements are reflected in a regional plan. WIOA is silent on the coordination of the regional and local plan, noting only that the regional plan must "incorporate local plans for each of the local areas in the planning region." The Department has determined that the most appropriate and least burdensome approach to implementing this provision is to incorporate the local plans within the regional plan. In this arrangement, the regional plan is completed in cooperation with the Local Boards and CEOs in a planning region, per § 679.510(a). Each individual Local Board and CEO will respond to the local planning requirements at § 679.560(b) through (e) individually. The Local Boards and CEOs in a planning region must cooperate to develop a common response to the local planning requirements that discuss regional labor market information, as required by § 679.540(a), and

any other appropriate requirements permitted by the Governor per § 679.540(b). When these activities are completed, the planning region submits one regional plan to the Governor that includes the common discussion of regional labor market information and other requirements as required by the Governor, as well as each local plan in a single document.

Proposed § 679.540(a) requires regional plans to include the items identified in

§§ 679.510 and 679.560, which implement secs. 106(c)(1) and 108(b) of WIOA.

Proposed § 679.540(b) specifies the Governor may issue regional planning guidance that allows local areas to provide a common response to any local requirements it deems as a shared regional responsibility, which may include regional economic analysis. The Department recognizes there are many planning requirements and encourages Governors to minimize the individual local area burden by reducing duplication and encouraging a coordinated service delivery strategy.

§ 679.550 What are the requirements for the development of the local plan?

Proposed § 679.550 explains the requirements for the development of the local plan. This section emphasizes the importance of collaboration and transparency in the development and submission of the local plan and subsequent modifications.

Proposed § 679.550(a) implements sec. 108(a) of WIOA and describes the general requirements for the preparation and content of the local plan.

Proposed § 679.550(b) requires Local Boards to make the local plan available for comment

before submitting the plan to the Governor and describes the steps necessary to ensure adequate public comment. This requirement provides all affected entities and the public an opportunity to provide input to inform plan development. This section implements sec. 108(d) of WIOA.

Proposed § 679.550(b)(5) requires the public comment process to be consistent with the 'sunshine provisions' at WIOA sec. 107(e) and proposed § 679.390 and that the Local Board must make the plan available through electronic means and in open meetings. This requirement ensures transparency to the public. This provision implements sec. 107(e) of WIOA.

§ 679.560 What are the contents of the local plan?

Proposed § 679.560, consistent with sec. 108(b) of WIOA, explains what information must be included in the local plan. These requirements set the foundation for WIOA principles, by fostering strategic alignment, improving service integration, and ensuring that the workforce system is industry-relevant, responding to the economic needs of the local workforce development area and matching employers with skilled workers. In addressing these planning requirements, boards engage strategic partners to develop and implement regionally aligned workforce development priorities and streamlined service delivery. Local and regional planning also is expected to lead to greater efficiencies by reducing duplication and maximizing financial and human resources. WIOA significantly expands the content requirements for the local plan.

Proposed § 679.560(a)(1) specifies that the local plan must meet the requirements of WIOA sec. 108(b)(1). Of relevance to this section, the use of economic and labor market information ensures that the local strategies are based on a thorough understanding of the economic opportunities and workforce needs of the region, and inform the alignment of strategies to the best interests of job seekers and employers with the economic future of the State. Similarly, the contents of the plan must

include an analysis of the workforce development activities in the region, including an analysis of the strengths and weaknesses of such services to address the identified education and skill needs of the workforce and employment needs in the region. A thorough assessment of the best available information or evidence of effectiveness and

performance information for specific service models in the region, as well as a plan to improve the effectiveness of such programs by adopting proven or promising practices, is an important part of this assessment and strategic vision. In addition, the regional analyses described in this proposed section may be conducted in cooperation with the other local areas in a local planning region as part of the regional planning requirements described at § 661.290 and must not be conducted by each local area.

Proposed § 679.560(a)(1)(iii), consistent with sec. 108(c) of WIOA permits local areas to use an existing analysis to meet the requirements in § 679.560(a).

Proposed § 679.560(b) outlines the required contents of the local plan that are required by secs. 108(b)(2)-(21) of WIOA to ensure that a local plan presents a comprehensive, customer-focused, and actionable service delivery strategy. This section emphasizes alignment and coordination to a greater extent than that required by WIA. Except where noted, the requirements outlined in § 679.560(b)(2) through (21) simply reiterate the statutory requirements without additional explanation.

Proposed § 679.560(b)(2) requires elaboration on the strategies for alignment by requiring that the Local Board describe how such alignment will improve access to services and to activities that lead to a recognized post-secondary credential. Proposed § 679.560(b)(2)(ii) explains that the Local Board must describe how they will work with entities carrying out core programs to facilitate the development of career pathways and co-enrollment, as appropriate, in core programs. Co-

enrollment allows partners to leverage resources, while providing a more comprehensive service delivery strategy that meets the needs of customers with several barriers to employment. Additionally, coordination of services in a customer-focused manner minimizes

the possibility of subsequent reentry into the public workforce system in cases where needed services were not provided or possible barriers not addressed.

Proposed § 679.560(b)(4) explains that the Local Board must describe how they will coordinate local workforce investment activities with regional economic development activities that are carried out in the local area and how the Local Board will promote entrepreneurial skills training and microenterprise services. Alignment between the public workforce system and local economic development activities is critical in order to identify and fulfill industry talent needs by training customers for emerging and in-demand job skills. Furthermore, microenterprise services refers to training for the purposes of self-employment. This training strategy may be appropriate for individuals or participants with multiple barriers to employment, including persons with disabilities.

Proposed § 679.560(b)(5) focuses on the delivery of services through the one-stop delivery system in the local area and requires descriptions regarding how the Local Board will ensure the continuous improvement of eligible providers of services, including through the promotion of proven and promising approaches and evaluation; how the Local Board will facilitate access to services, including in remote areas, through the use of technology and other means; how entities within the one-stop delivery system, including one-stop operators and the one-stop partners, will comply with WIOA sec. 188, if applicable, and applicable provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) regarding physical and programmatic accessibility; and the roles and resource contributions of the one-stop partners. WIOA, and the corresponding regulations at § 678.420, establishes the roles of one-stop partners. These include providing access to the partner's programs through the one-stop system; making program funds

available to maintain the one-stop delivery system, including

infrastructure costs; providing applicable career services; entering into a MOU with the Local Board regarding one-stop operation; ongoing participation in the one-stop system; and providing representation on State and Local Workforce development boards as required and Board committees as needed. Additionally, one-stop partners are responsible for sharing infrastructure and career services costs. Documenting how one-stop partners will manage their shared roles and contribute to the funding of the one-stop in the local plan increases accountability and transparency.

Proposed § 679.560(b)(6) through (11) focus on coordination activities for improving services and avoiding duplication. Proposed § 679.560(b)(11) reflects a new statutory requirement not contained in WIA that the local plan include plans, assurances and strategies for maximizing coordination with Wagner-Peyser Act services and other services provided through the one-stop system.

Proposed § 679.560(b)(12) and (13) are also new requirements under WIOA. Proposed

§ 679.560(b)(12) speaks to coordination with adult education and literacy activities under title II of WIOA and requires a description of how the Local Board will carry out the review of local applications submitted under title II. Proposed § 679.560(b)(13) is intended to enhance the provision of services to individuals with disabilities through cooperative agreements, as defined in WIOA sec. 107(d)(11), and other collaborative efforts between the Local Board and the local VR entity. All such collaborative efforts must be described in the local plan.

Proposed § 679.560(b)(16) requires the Local Board to include local levels of performance that the board has negotiated with the Governor in the local plan. Additionally, this section proposes that the local plan must include the standards, process, or performance measures that the Local

Board will use to evaluate the performance of the local fiscal agent

where the CEO has designated such an entity. These proposed requirements increase transparency and public accountability, while helping ensure the Local Board has the information it needs to ensure sustained fiscal integrity of public funds.

Proposed § 679.560(b)(19) maintains the requirement that the local plan include a description of the process used by the Local Board to provide for public input into the development of the plan and for public comment on the completed plan prior to its submission. Unlike WIA, this regulation identifies the 30-day timeframe for public comment prior to submission of the plan.

Proposed § 679.560(b)(20), new to WIOA, requires a description of how the one-stop centers are implementing and transitioning to an integrated, technology-enabled intake and case management information system for programs carried out under WIOA and by one-stop partners.

Proposed § 679.560(b)(21) requires that the plan include the process by which priority of service must be applied by the one-stop operator, but also clarifies that such priority is for adult career and training services and must be given to recipients of public assistance, other low- income individuals, and individuals who are basic skills deficient. The Department is proposing to include this requirement under the authority to require additional reporting, recordkeeping, and investigations. Including the priority service policy in the local plan will help ensure a more uniform application of the policy throughout the local area.

As permitted by sec. 108(b)(22) of WIOA, proposed § 679.560(c) requires that the plan include any additional information required by the Governor.

Proposed § 679.560(d) recommends that the local plan identify the portions of the local plan that the Governor has designated as appropriate for common response among all local areas in a planning region, as per the regulations at 20 CFR 679.540.

Proposed § 679.560(e) reflects the requirement in WIOA sec. 108(e) that any comments submitted during the public comment period that represent disagreement with the plan must be submitted with the local plan.

§ 679.580 When must the local plan be modified?

Proposed § 679.580(a) requires the Governor to establish procedures governing local plan review and modification to ensure that the biannual review and modification of local plans is conducted consistently throughout the State.

Proposed § 679.580(b) explains that the Local Board and appropriate CEOs must review the local plan every 2 years and submit a modification as needed, based on significant changes in labor market and economic conditions and other factors including changes to local economic conditions, changes in the financing available to support WIOA title I and partner-provided WIOA services, changes to the Local Board structure, or a need to revise strategies to meet performance goals. This requirement is consistent with WIOA sec. 108(a). This proposed requirement helps ensure that local areas use their plans to drive service delivery strategies and the activities the local area is performing remains consistent with the plan.

§ 679.570 What are the requirements for approval of a local plan?

Proposed § 679.570 describes the approval of the comprehensive 4-year local plan. Proposed § 679.570(a) requires that the Governor review completed plans and stipulates that unless the Governor determines that the conditions described in paragraphs (a)(1) through (3) are met the plan will be considered approved 90 days after submission of the plan to the Governor. This section

implements sec. 108(e) of WIOA.

Proposed § 679.570(b) outlines the processes, roles, and responsibilities for situations in which the State is a single local area. Proposed § 679.570(b)(1) clarifies the State must

incorporate the local plan in the State's Unified or Combined State Plan submitted to DOL. Proposed § 679.570(b)(2) states that the Secretary of Labor will perform the roles assigned to the Governor as they relate to local planning activities. Proposed § 679.570(b)(3) indicates the Secretary of Labor will issue planning guidance for single area States. This section implements sec. 106(d) of WIOA.

The Department recognizes that the development of the local plan is dependent on several other essential State and local WIOA implementation activities and that local areas may not be able to respond fully to each of the required elements of the local plan in the timeframe provided. The Department seeks comment on the scope of the challenges local areas may face regarding regional and local planning, and potential actions that the Department can take to help local areas address these challenges.

5. Subpart E – Waivers/WorkFlex (Workforce Flexibility Plan)

This subpart describes the statutory and regulatory waiver authority provided by WIOA sec. 189(i), and the requirements for submitting a Workforce Flexibility Plan under WIOA sec.

190. WIOA provides States the flexibility to request a waiver of program requirements in order to implement new strategic goals for the improvement of the statewide workforce development system and to provide better customer service in exchange for accountability for expected programmatic outcomes. A Workforce Flexibility plan provides additional flexibility to the State. In general, a State with an approved Workforce Flexibility plan is given the authority to identify local level

provisions to waive without further approval from the Secretary of Labor to achieve outcomes specified in the plan.

A description of what provisions of WIOA and Wagner-Peyser may and may not be waived is included, along with an explanation of the procedures for requesting a waiver. The

subpart also describes what may and may not be waived under a Workforce Flexibility Plan, and the procedures for obtaining approval of a plan. The WIOA requirements for obtaining approval for a waiver or Workforce Flexibility Plan are similar to those in WIA secs. 189(i) and 192, respectively; therefore, many of the proposed regulations are the same as the regulations implementing WIA.

§ 679.600 What is the purpose of the General Statutory and Regulatory Waiver Authority in the Workforce Innovation and Opportunity Act?

Proposed § 679.600(a) explains that the purpose of the general statutory and regulatory waiver authority, provided under WIOA sec. 189(i)(3), is to provide flexibility to States and local areas to enhance their ability to improve the statewide workforce investment system to carry out WIOA's goals and purposes.

Proposed § 679.600(b) explains that a waiver may be requested to address impediments to a strategic plan that is consistent with the purposes of title I of WIOA, which are identified at

§ 675.100(a) through (h).

§ 679.610 What provisions of the Workforce Innovation and Opportunity Act and the Wagner-Peyser Act may be waived, and what provisions may not be waived?

Proposed § 679.610(a) implements WIOA sec. 189(i)(3)(A)(i), and explains that the

Secretary may waive for a State or local area any of the statutory or regulatory requirements of WIOA title I, subtitles A, B, and E, except for the requirements listed in paragraphs (a)(1) through (12). As noted in this section, the purposes of title I of WIOA are described at 20 CFR 675.100(a) through (h). The Department will provide examples of requirements that it will not waive in subsequently issued guidance.

Proposed § 679.610(b) follows WIOA sec. 189(i)(3)(A)(ii), and explains that the Secretary may waive the statutory or regulatory requirements of Wagner-Peyser secs. 8 through 10, except for the requirements listed in paragraphs (b)(1) and (2).

§ 679.620 Under what conditions may a Governor request, and the Secretary approve, a general waiver of statutory or regulatory requirements under the Workforce Innovation and Opportunity Act?

Proposed § 679.620(a) through (f) implements WIOA sec. 189(i)(3) and describes the conditions under which a Governor may request, and the Secretary may approve a waiver of statutory or regulatory requirements.

Proposed § 679.620(a) explains that the Secretary will issue guidelines on waiving WIOA and Wagner-Peyser requirements. States will be required to follow the Secretary's guidelines, which supplement the requirements listed in 20 CFR 679.600 through 679.620. The guidelines will be issued contemporaneously with State planning guidance. This proposed section retains the same requirements found at 20 CFR 661.420(f).

Proposed § 679.620(b) explains that the Governor may request a general waiver in consultation with the appropriate CEOs by submitting a waiver plan which accompanies the State's WIOA 4-year Unified or Combined State Plan, 2-year modification, or by directly submitting a waiver plan at any time after a State's WIOA Plan is approved. This approach is consistent with

WIOA secs. 102 and 103, which require the State to submit either a 4-year Unified or Combined State Plan.

Proposed § 679.620(c) explains that a Governor's waiver request may seek waivers for the entire State or for one or more local areas within the State. This proposed section retains the same requirements found at 20 CFR 661.420(b).

Proposed § 679.620(d) lists the required components of a waiver plan for the improvement of the statewide workforce development system and includes the requirements of WIOA sec. 189(i)(3)(B). Specifically, the plan must identify the statutory or regulatory requirements that are requested to be waived, and the goals that the State or local area intend to achieve as a result of the waiver. The plan must also describe the actions that the State or local area has taken to remove State or local statutory or regulatory barriers; the goals of the waiver and the expected programmatic outcomes if the waiver is granted; the individuals affected by the waiver; and the processes used to monitor the progress in implementing the waiver, provide notice to any Local Board affected by the waiver, and provide any Local Board affected by the waiver an opportunity to comment on the request.

Proposed § 679.620(d)(1) requires that the waiver plan explain how the goals of the waiver relate to the Unified or Combined State Plan. Waivers must support State strategies as enumerated in the State Plan. Waivers are not separate or detached from the Unified or Combined State Plan: an approved waiver constitutes a modification of the State Plan.

Additionally, as required by § 679.620(d)(4), the waiver plan must describe how the waiver will align with the Department's priorities, such as supporting employer engagement, connecting education and training strategies, supporting work-based learning, and improving job and career results. The Department's priorities may change and evolve to reflect major changes in the

economy, changes in the needs of the workforce, and new developments in service strategy approaches. This new requirement ensures that the Department is issuing waivers that align with and help achieve the priorities of the Department. As noted in § 679.620(d)(4)(v), a more complete list of current priorities will be articulated in future guidance.

Proposed § 679.620(d)(5) requires the waiver plan to generally describe the individuals affected by the proposed waiver. This section specifically requires that the plan describe how the waiver will impact services for disadvantaged populations and individuals with multiple barriers to employment. One of the primary purposes of WIOA is to increase and enhance education, employment, and training opportunities for individuals with barriers to employment, including low-income individuals, individuals with disabilities, the Native American population, and the other groups identified in sec. 3(24) of the Act. The Department has added this specific requirement to ensure that the State, as part of its waiver request, considers the employment and training needs of these groups and how the proposed waiver would affect these populations.

An additional requirement at proposed § 679.620(d)(6)(iv) is that the plan must describe the processes used to ensure meaningful public comment, including comment by business and organized labor. This requirement was included to ensure as transparent a process as possible, to make sure that the public is given an opportunity to voice their concerns or support of potential changes in the public workforce system, while the Governor is afforded an opportunity to reflect on the opinions of the public before proceeding with a waiver request. This proposed section retains the same requirements found at 20 CFR 661.420(c)(5)(iv).

The Governor must also describe, per § 679.620(d)(6)(v), the process used to collect and report information about the goals and outcomes achieved under the waiver plan in the State's WIOA Annual Report. The Department approves waivers in order to assist States and local areas in achieving goals and outcomes that will improve the statewide workforce development system. This

collection and reporting requirement holds States accountable for the goals and outcomes to be achieved with the approved waivers and provides a regular and public assessment of the effectiveness of States and local areas in doing so.

Finally, proposed § 679.620(d)(7) explains that if a waiver is up for renewal, the Secretary may require that States provide the most recent data available about the outcomes achieved under the existing waiver. This requirement will ensure that the Department has the most recent, relevant information before deciding whether to renew a waiver. As part of its decision the Department may take other factors into account when deciding to renew or deny a waiver.

Proposed § 679.620(e) specifies that the Secretary will issue a decision on a waiver request within 90 days of the receipt of the waiver, consistent with WIOA sec. 189(i)(3)(C).

Proposed § 679.620(f) implements the requirements of WIOA secs. 189(i)(C)(i) and (ii), and explains that the Secretary will approve a waiver request only to the extent that the Secretary determines that the requirements for which a waiver is requested impede the ability of either the State or local area to implement the State's plan to improve the statewide workforce investment system, and the State has executed a MOU with the Secretary requiring the State to meet, or ensure that the local area meets, agreed-upon outcomes and to implement other appropriate measures to ensure accountability. This section also makes approval of the waiver contingent on the Secretary's determining that the waiver plan meets all of the requirements of WIOA sec.

189(i)(3) and §§ 679.600 through 679.620. This proposed section retains the same requirements found at 20 CFR 661.420(e), except that the statutory reference has changed from sec. 189(i)(4) to sec. 189(i)(3).

Consistent with current practice, proposed § 679.620(g) authorizes the Secretary to approve a waiver for as long as the Secretary determines is appropriate; however, the duration of the waiver

may not exceed the duration of a State's current Unified or Combined State Plan. For example, a waiver granted during the third year of the Plan would have to be reconsidered as part

of the subsequent plan submission and approval cycle, at the latest. By limiting the duration of the waiver, the Department will be able to ensure that the waiver is consistent with the goals of the State's plan and remains consistent with the priorities of the Department.

Proposed § 679.620(h) gives the Secretary the authority to revoke a State's waiver under certain circumstances. The Secretary has an obligation to oversee the implementation and performance of States under their State plan, including any waivers granted by the Department. As part of this responsibility, the Department proposes to allow the Secretary to revoke a waiver granted under this section if the State fails to meet the agreed upon outcomes and measures, the State fails to comply with the terms and conditions of the MOU or other document that includes the terms and conditions of the waiver, and if the Secretary determines that the waiver no longer meets any of the requirements of §§ 679.600 through 679.620. Limiting the Secretary's authority to revoke to these circumstances balances the State's need for flexibility with the Secretary's duty to oversee the implementation of the waiver.

§ 679.630 Under what conditions may the Governor submit a Workforce Flexibility Plan?

Proposed § 679.630 describes the conditions under which the Governor may submit a workforce flexibility (work-flex) plan.

Proposed § 679.630(a) includes the requirements of WIOA sec. 190(a), and explains that a State may submit a workforce flexibility plan for approval by the Secretary, under which three categories of statutory or regulatory requirements can be waived.

Proposed § 679.630(a)(1), implementing WIOA sec. 190(a)(1), permits a State to waive any of the statutory or regulatory requirements that are applicable to local areas under WIOA title I (if the local area requests the waiver), except for the requirements listed in proposed paragraphs (a)(1)(i) through (iv). In addition to the statutory exceptions, this proposed section

adds the requirement that any of the statutory provisions essential to WIOA's title I purposes cannot be waived.

The second category, described in proposed § 679.630(a)(2), and implementing WIOA sec. 190(a)(2), explains that any of the statutory or regulatory requirements applicable to the State under Wagner-Peyser Act secs. 8 through 10 may be waived, except for requirements listed at § 679.630(a)(2)(i) and (ii). This proposed section retains the same requirements found at 20 CFR 661.430(a)(2).

Proposed § 679.630(a)(3), implementing WIOA sec. 190(a)(3), permits waiver of the statutory or regulatory requirements applicable under the Older Americans Act of 1965 to State agencies on aging with respect to activities carried out using funds allotted under sec. 506(b) of the Older Americans Act, except the for requirements identified at § 679.630(a)(3)(i) through (iv).

Proposed § 679.630(b) explains what States are required to include in their workforce flexibility plan.

Proposed § 679.630(b)(1) and (3) implement the requirements at WIOA sec. 190(b)(1), and specify that a State workforce flexibility plan must include a description of the process by which local areas in the State may submit and obtain State approval of applications for waivers, and the requirements of title I of WIOA that are likely to be waived by the State under the plan.

Proposed § 679.630(b)(2) adds the requirement that the plan include a description of the criteria that the State will use to approve local area waiver requests and how such requests support

implementation of the goals identified in the State plan. These criteria must be addressed in the waiver review process discussed at § 679.630(b)(1). This requirement ensures that all local waiver requests are evaluated consistently by the State.

Proposed § 679.630(b)(4) implements the requirements of WIOA sec. 190(b)(2) and requires a description of the Wagner-Peyser Act secs. 8 through 10 that are proposed for waiver, if any. This proposed section retains the same requirements found at 20 CFR 661.430(c)(3).

Proposed § 679.630(b)(5) implements the requirements of WIOA sec. 190(b)(3) and requires a description of the requirements of the Older Americans Act that are proposed for waiver, if any. This proposed section retains the same requirements found at 20 CFR 661.430(c)(4).

Proposed § 679.630(b)(6) implements the requirements of sec. 190(b)(4) of WIOA by requiring that the plan describe the outcomes to be achieved by the waivers. The section explains that "outcomes" include, when appropriate, revisions to adjusted levels of performance included in the State or local plan under WIOA title I, and a description of the data or other information the State will use to track and assess outcomes. This provision allows the Department to measure more effectively the impact of waivers. For some waivers, it may be difficult to make a direct connection between the waiver and a direct impact on performance; in those instances the State must discuss the impact of a waiver on performance to the extent that the State has available data.

Proposed § 679.630(b)(7) implements WIOA sec. 190(b)(5) and requires that the plan include the measures to be taken to ensure appropriate accountability for Federal funds in connection with the waivers. This proposed section retains the same requirements found at 20 CFR 661.430(b)(6) .

Proposed § 679.630(c) explains that a State's workforce flexibility plan may accompany the State's Unified or Combined State Plan, the required 2-year modification of the State's

Unified or Combined State Plan, or may be submitted separately as a plan modification. This requirement emphasizes that the State may submit a workforce-flexibility plan at any time.

Proposed § 679.630(d) explains that the Secretary may approve a workforce flexibility plan consistent with a period of approval of the State's Unified or Combined State Plan, and not more than 5 years. For example, if a workflex plan is approved in the third year of a 4-year Unified Plan, the approval would be for the remainder of the period covered by the plan and then would need to be reconsidered as part of the subsequent Unified Plan or Combined Plan.

Approving a workforce flexibility plan for the life of a currently approved Unified or Combined State Plan ensures that the waivers granted under the plan are consistent with the strategies outlined in the State Plan. The period of up to 5 years is consistent with sec. 190(c) of WIOA.

Proposed § 679.630(e) implements WIOA sec. 190(d) and requires the State to provide notice and opportunity for comment on the proposed waiver request to all interested parties and the general public before submitting the workforce flexibility plan to the Secretary. This proposed section retains the same requirements found at 20 CFR 661.430(e).

Proposed § 679.630(f) explains that the Secretary will issue guidelines under which States may request designation as a workflex State. This proposed section retains the same requirements found at 20 CFR 661.430(f) and notes that the Secretary's guidelines may include requirements for a State to implement an evaluation of the impact of work-flex in that State.

§ 679.640 What limitations apply to the State's Workforce Flexibility Plan authority under the Workforce Innovation and Opportunity Act?

Proposed § 679.640 explains the limitations that apply to the State's Workforce Flexibility Plan authority under WIOA.

Proposed § 679.640(a)(1) specifies that under work-flex waiver authority, a State must not waive WIOA, Wagner-Peyser Act, or Older Americans Act requirements which are excepted from the work-flex waiver authority and described in § 679.630(a). This proposed section retains the same requirements found at 20 CFR 661.440(a)(1).

Proposed § 679.640(a)(2) explains that requests to waive title I of WIOA requirements that are applicable at the State level may not be granted under work-flex waiver authority granted to a State. These requests may only be granted by the Secretary under the general waiver authority which is described at §§ 679.610 through 679.620. The Department included this provision to emphasize that work-flex waivers are issued under separate authority than general waivers, and that States may not use work-flex waiver authority as a substitute for the general State-level waivers available under sec. 189(i)(3). This proposed section retains the same requirements found at 20 CFR 661.440(a)(2).

Proposed § 679.640(b) expands on § 679.630(b)(6) by explaining that once approved the Secretary may terminate a work-flex designation if the State fails to meet agreed-upon outcomes or the terms and conditions contained in its workforce flexibility plan. The Department included this provision to emphasize that the Department reserves the authority to terminate a workflex plan if a State is not meeting the terms and conditions agreed to between the Department and the State, including the relevant performance outcomes.

C. ***Part 680 – Adult and Dislocated Worker Activities Under Title I of the Workforce Innovation and Opportunity Act***

1. Introduction

In this part of the proposed rule, the Department describes requirements relating to the services that are available for adults and dislocated workers under WIOA. Adult services are

provided to job seekers who are at least 18 years old; the statute and the proposed rule, in providing for such services, establish a priority for serving low-income individuals, participants on public assistance, and individuals lacking basic work skills. Dislocated worker services are targeted for workers who are unemployed and have lost a job, through no fault of their own, sometimes through mass layoffs that happen during the business cycle. The goal of these services is to provide for the return of these individuals to quality employment. Dislocated workers generally include an individual who:

- Has been terminated or laid off, or has received a notice of termination or layoff from employment;
- Is eligible for or has exhausted entitlement to UC or has been employed for a duration sufficient to demonstrate attachment to the workforce but is not eligible for UC due to insufficient earnings or works for an employer not covered under State UC law; and
- Is unlikely to return to a previous industry or occupation.

Under WIOA, adults and dislocated workers may access career services and training services. WIOA provides for a workforce system that is universally accessible, customer centered, and training that is job-driven. WIOA will provide for career and training services at the nation's nearly 2,500 one-stop centers. Training is supported through a robust ETPL, comprised of entities with a proven capability of securing participants with quality employment. WIOA also provides enhanced access and flexibility for work-based training options, such as OJT, customized training, and incumbent worker training. In this part, the Department also discusses supportive services and needs-related payments that can be provided, based on customer needs, to enable them to participate in WIOA career and training services.

2. Subpart A – Delivery of Adult and Dislocated Worker Activities Under Title I of the Workforce Innovation and Opportunity Act

Introduction

This subpart discusses the role of WIOA adult and dislocated worker services through the one-stop delivery system. The one-stop delivery system is the foundation of the workforce system. The system provides universal access to career services to meet the diverse needs of adults and dislocated workers. The grant recipient(s) for the adult and dislocated worker program is a required partner in the one-stop delivery system and is subject to the required partner responsibilities set forth in § 678.415.

Career and training services, tailored to the individual needs of jobseekers, form the backbone of the one-stop delivery system. While some jobseekers may only need self-service or other basic career services like job listings, labor market information, labor exchange services or information about other services, some jobseekers will need services that are more comprehensive and tailored to their individual career needs. These services may include comprehensive skills assessments, career planning, and development of an individual employment plan that outlines the needs and goal of successful employment. Under WIA, career services were identified as core and intensive services and generally participants would go through each level of service in order to eventually receive training. WIOA clarifies that individuals receiving services in the one-stop centers must receive the service that is needed to assist the individual to meet his or her job search

goals, and does not need to follow a fixed sequence of services that may not be necessary to effectively serve the individual.

Under WIOA, the Department proposes to classify career services into two categories: basic and individualized career services. This grouping is not designed to create barriers to training, but rather identifies the importance that these two types of career services can have in helping individuals obtain employment. Basic career services must be made available to all job seekers and include services such as labor exchange services, labor market information, job listings, and information on partner programs. Individualized career services identified in WIOA and described in these proposed regulations are to be provided by local areas as appropriate to help individuals to obtain or retain employment.

Under WIA, participants often were required to undergo a sequence of core and intensive services in order to receive training. WIOA clarifies that there is no sequence of service requirement in order to receive training. Training is made available to individuals after an interview, assessment or evaluation determines that the individual requires training to obtain employment or remain employed. Supportive services, including needs-related payments, can be essential to enable individuals to participate in career and training services.

§ 680.100 What is the role of the adult and dislocated worker programs in the one-stop delivery system?

Proposed § 680.100 directs that the one-stop system is the foundational system through which adult and dislocated worker program services are provided to eligible individuals. WIOA merges the categories of core services and intensive services under WIA into the category of career services.

§ 680.110 When must adults and dislocated workers be registered and considered a participant?

Proposed § 680.110 addresses the important distinction between registration and participation—two separate actions in the process by which adults and dislocated workers seek direct, one-on-one staff assistance from the one-stop system. The distinction is important for recordkeeping and program evaluation purposes. Individuals who are primarily seeking information are not treated as participants and their self-service or informational search requires no registration. When an individual seeks more than minimal assistance from staff in taking the next step towards self-sufficient employment, the person must be registered and eligibility must be determined. To register, as defined in § 675.300, is the point at which information that is used in performance information begins to be collected. Participation is the point at which the individual has been determined eligible for program services and has received or is receiving a WIOA service, such as career services, other than self-service or informational service and is the point at which an individual is to be included in performance calculations for the primary indicators in 20 CFR part 681.

Proposed § 680.110(a) describes the registration process for collecting information to support a determination of eligibility for the WIOA adult and dislocated worker programs. This section explains that registration can be done electronically, through interviews, or through an application. This section proposes to distinguish the term "participation" from registration by providing that participation occurs after IC and eligibility determination, when an individual receives a WIOA service, other than self-service or informational activities.

Proposed § 680.110(b) requires that adults and dislocated workers who receive services other than self-service and informational activities must be registered and considered a participant for WIOA title I services.

Proposed § 680.110(c) maintains the requirement in WIA regulation § 663.105(c) that EO data be collected on every individual who is interested in being considered for WIOA title I financially assisted aid, benefits, services, or training, and who has signified that interest by submitting personal information in response to a request from the service provider.

§ 680.120 What are the eligibility criteria for career services for adults in the adult and dislocated worker programs?

An individual must be 18 years of age or older to receive career services in the adult program. Priority for individualized career services and training services funded with title I adult funds must be given to low-income adults and public assistance recipients and individuals who are basic skills deficient, in accordance with WIOA sec. 134(c)(3)(E) and proposed § 680.600.

§ 680.130 What are the eligibility criteria for career services for dislocated workers in the adult and dislocated worker programs?

Proposed § 680.130(a) states that an individual must meet the definition of "dislocated worker" in WIOA sec. 3(15) to receive career services in the dislocated worker program.

Proposed § 680.130(b) provides that Governors and Local Boards may develop policies and procedures for one-stop operators to use in determining a dislocated worker's eligibility for career services consistent with the definitions provided in the statute, regulations and any guidance issued by the Secretary.

Proposed § 680.130(b)(1) and (2) allows for Governors and Local Boards to develop policies and procedures for what constitutes a "general announcement" of a plant closing. These policies and procedures could include policies and procedures for what constitutes a "general announcement" of a plant closing or for what constitutes "unemployed as a result of general economic conditions in the community in which the individual resides or because of natural

disasters" for individuals who are self-employed, including family members and ranch hands.

§ 680.140 What Workforce Innovation and Opportunity Act title I adult and dislocated worker services are Local Boards required and permitted to provide?

Proposed § 680.140 describes generally the availability of funds for use in providing services for adult and dislocated workers under title I of WIOA. Local areas have significant flexibility when providing services with adult and dislocated worker funds. In addition to the required career and training services, local areas may use these funds to provide additional job seeker services, business services, as well as facilitate enhanced coordination between other partner programs and entities at the State and local level. Local areas can use these funds to develop new types of technical assistance, develop new intake procedures, test new procurement methods which may lead to better outcomes for jobseekers, and ensure robust services to businesses throughout the workforce system.

Paragraph (a) provides that WIOA title I adult and dislocated worker funds to local areas must be used to provide career and training services through the one-stop delivery system. Local areas have discretion in the appropriate mix of services, but both career and training services must be made available through the one-stop system for provision to eligible individuals served through the system.

Paragraph (b) describes the services that may be provided with WIOA title I adult and dislocated worker funds in local areas.

Subparagraph (b)(1) identifies "Job Seeker Services." These services include customer support activities to help individuals with barriers to employment, training programs for displaced homemakers and individuals training for nontraditional occupations, work support activities for low-wage workers, supportive services and needs-related payments, and providing

transitional jobs to individuals with barriers to employment who are chronically unemployed or have an inconsistent work history.

Paragraph (b)(2) identifies "Employer Services." These services include customized screening and referral of qualified participants in training to employers, customized employment-related services to employers, and business services.

Paragraph (b)(3) identifies "Coordination Activities." Coordination is required among training and employment activities under WIOA, child support agencies and services, Department of Agriculture extension programs, facilitating remote access by using technology and the one-stop delivery system, economic development agencies, linkages between the public workforce system and employers and those between the one-stop delivery system and unemployment insurance programs, and organizations that provide services to individuals with disabilities.

Paragraph (b)(4) authorizes local areas to enter into pay-for-performance contracts as part of a training strategy. Local areas may use up to 10 percent of their total adult and dislocated worker funds under this procurement method.

Paragraph (b)(5) provides for technical assistance for one-stop operators, partners, and ETPs regarding the provision of services to individuals with disabilities.

Paragraph (b)(6) provides for local areas to adjust the economic self-sufficiency standards for local areas. Levels of self-sufficiency may vary by local area and the local economy; this flexibility allows local areas to tailor their services in a way that works in their local economy.

Paragraph (b)(7) provides for the implementation of promising services to workers and employers. Local areas can build upon promising practices to improve service delivery to both job seekers and employers.

Paragraph (b)(8) provides for the use of funds for incumbent worker training. Local areas can use up to 20 percent of their combined adult and dislocated worker funds to do incumbent worker training consistent with subpart F of this part.

§ 680.150 What career services must be provided to adults and dislocated workers?

At a minimum, all of the basic career services described in WIOA sec. 134(c)(2)(A)(i)-(xi) and § 678.430(a) must be provided in each local area through the one-stop delivery system. These services include referrals to partner programs, initial assessments, and labor exchange services.

In addition, services described in WIOA sec. 134(c)(2)(A)(xii) and § 678.430(b), such as career counseling and the development of an individual employment plan, must be made available if appropriate for an individual to obtain or retain employment. These services are categorized as "Individualized Career Services" in § 678.430(b). An individual employment plan is discussed in connection with proposed § 680.180.

Appropriate follow-up services must be made available to a participant placed in unsubsidized employment for a minimum of 12 months following the participant's first date of employment. Follow-up services can be useful for participants in order to maintain employment. One-stop staff can provide workplace information and tips for success in a workplace environment. Additionally, follow-up services provide a continuing link between the participant and workforce system; these services allow the one-stop to assist with other services the participant may need once he or she obtains employment. Examples may include assistance with

employer benefits, health insurance, and financial literacy and budgeting assistance.

§ 680.160 How are career services delivered?

Proposed § 680.160 explains that career services must be provided through the one-stop delivery system. Career services may be provided by the one-stop operator or through contracts with service providers approved by the Local Board. A Local Board may not be the provider of career services unless it receives a waiver from the Governor and meets other statutory and regulatory conditions.

§ 680.170 What is an internship or work experience for adults and dislocated workers?

Proposed § 683.170 defines an internship or work experience as a planned, structured, time-limited learning experience that takes places in a workplace. An internship or work experience may be paid or unpaid, as appropriate. An internship or work experience may be provided in the private for-profit, non-profit, or public sectors. Labor standards apply to any internship or work experience in which an employee/employer relationship exists under applicable law. The Department recognizes the role work experiences and internships play in helping individuals obtain the skills they need to succeed in the workplace. An internship or work experience for a participant in WIOA is classified as an Individualized Career Service as described in § 678.430(b). Internships and work experiences provide a helpful means for an individual to gain experience that leads to unsubsidized employment.

§ 680.180 What is the individual employment plan?

Proposed § 680.180 explains that an individual employment plan is an individualized career service, as described in § 678.430(b), jointly developed by the participant and career planner, that may be appropriate for an individual. The plan includes an ongoing strategy to

identify employment goals, achievement objectives, and an appropriate combination of services for the participant to obtain these goals and objectives. Individual employment plans are one of the most effective ways to serve individuals with barriers to employment, and to coordinate the various services including training services they may need to overcome these barriers.

3. Subpart B – Training Services

Introduction

Training services are discussed at proposed §§ 680.200 through 680.230. WIOA is designed to increase participant access to training services. Training services are provided to equip individuals to enter the workforce and retain employment. Training services may include, for example, occupational skills training, OJT, registered apprenticeship which incorporates both OJT and classroom training, incumbent worker training, pre-apprenticeship training, workplace training with related instruction, training programs operated by the private sector, skill upgrading and retraining, entrepreneurial training, and transitional jobs. Training services are available for individuals who, after interview, evaluation or assessment, and case management are determined to be unlikely or unable to obtain or retain employment that leads to self-sufficiency or higher wages from previous employment through career services alone. The participant must be determined to be in need of training services and to possess the skills and qualifications to successfully participate in the selected

program. The Department explains that some participants may need additional services to assist their vocational training, such as job readiness training, literacy activities including English language training, and customized training.

§ 680.200 What are training services for adults and dislocated workers?

Proposed § 680.200 directs the reader to WIOA sec. 134(c)(3)(D) for a description of available training services. The proposal provides a series of examples that is not all-inclusive.

§ 680.210 Who may receive training services?

Proposed § 680.210(a) discusses the process used to determine when and what training services must be made available to an individual. Under WIOA, an individual may receive training services after an interview, evaluation, or assessment, and career planning if the one-stop operator or partner determines the individual is unlikely or unable, by only receiving career services, to retain employment that leads to economic self-sufficiency or wages comparable to or higher than wages from previous employment. Additionally, the one-stop operator or partner must also determine that the training the individual receives would result in employment leading to economic self-sufficiency or wages comparable to or higher than wages from previous employment. The one-stop operator or partner must also determine that the individual has the skills and qualifications to successfully participate in and complete the training. Upon a determination that career services are unlikely to obtain these employment outcomes, the individual may be enrolled in training services. The individual should have the skills and qualifications needed to successfully participate in and complete the training services.

Proposed § 680.210(b) requires that individuals, for whom training has been deemed appropriate, select a training program linked to employment opportunities in the local area or in an area to which the individual is willing to commute or relocate. The selection of this training program should be fully informed by the performance of relevant training providers, and individuals must be provided with the performance reports for all training providers who provide a relevant program.

Proposed § 680.210(c) explains that WIOA training services must be provided when other sources of grant assistance are unavailable to the individual.

Proposed § 680.210(d) requires that training services provided under the WIOA adult funding stream must be provided in accordance with the State or Local Board's priority system.

§ 680.220 Are there particular career services an individual must receive before receiving training services under Workforce Innovation and Opportunity Act?

WIOA removed the requirement under WIA that an individual had to receive an intensive service before receiving training services. The proposal explains that, other than an interview, evaluation, or assessment and career planning there is no requirement that additional career services must be provided before an individual enrolls in training. Where an assessment is provided, a previous assessment may be adequate for this purpose. There is no requirement for a sequencing of services under WIOA. If individuals are determined to be in need of training consistent with WIOA sec. 134(c)(3) then they may be placed in training services. The Department encourages the use of individualized career services under § 678.420(b) when appropriate for an individual; an individual employment plan or career counseling informed by local labor market information and training provider performance reports often will be appropriate before an individual receives training services.

Proposed § 680.220(b) requires that the case files for individuals must document the participant eligibility for training services and explain how this determination was made—by interview, evaluation or assessment, career planning, or other career service, such as an individual employment plan. It is important that the one-stop gather enough information, by whatever means, be they through an interview or through career services, to justify the need for training services.

§ 680.230 What are the requirements for coordination of Workforce Innovation and Opportunity Act training funds and other grant assistance?

Proposed § 680.230 restates the requirements for coordination with other forms of assistance that apply under WIA. The Department has also added a sentence to § 680.230(a)(2) to reflect the new provision in WIOA sec. 134(c)(3)(B)(iii) that one-stop operators and one-stop partners may take into account the full cost of the training, including the cost of supportive services. The Department encourages program operators to do so.

Proposed § 680.230(a) states that when coordinating other grant assistance the one-stop operator or partner may take into account the full cost of participating in training services, including the cost of dependent care and transportation and other appropriate costs.

Additionally, the one-stop operator or partner must coordinate training funds available and make funding arrangements with one-stop partners and other entities.

Proposed § 680.230(b) states that WIOA participants may enroll in WIOA-funded training while the participant has a Pell Grant application pending as long as the one-stop operator has made arrangements with the training provider and the WIOA participant regarding the award of the Pell Grant. The training provider must reimburse the one-stop operator or partner the amount of the WIOA funds used to pay for the training costs covered by the Pell Grant in the event that one is approved after WIOA-funded training has begun. Reimbursement from the participant for

education-related expenses is not required.

4. Subpart C – Individual Training Accounts

Introduction

Individual Training Accounts (ITAs) are key tools used in the delivery of many training services. The Department seeks to provide maximum flexibility to State and local program operators in managing ITAs. These proposed regulations do not establish the procedures for making payments, restrictions on the duration or amounts of the ITA, or policies regarding exceptions to the limits. The authority to make those decisions resides with the State or Local Boards. The authority that States or Local Boards may use to restrict the duration of ITAs or restrict funding amounts must not be used to establish limits that arbitrarily exclude eligible providers.

Through the one-stop center, individuals will be provided with quality and performance information on providers of training and, with effective career services, case management, and career planning with the ITA as the payment mechanism. ITAs allow participants the opportunity to choose the training provider that best meets their needs. Under WIOA, ITAs can more easily support placing participants into registered apprenticeship programs than under WIA.

§ 680.300 How are training services provided?

Proposed § 680.300 explains that in most circumstances an individual will receive training

services through an ITA. An ITA is established on behalf of the participant, where services are purchased from eligible providers selected in consultation with a career planner. Payments may be made through electronic transfers of funds, vouchers, or other appropriate methods. Payments may be made at the beginning of the training program or on an incremental basis; the payment processes must be decided at the local level. As explained in proposed

§ 680.300, an ITA is used by an individual to access training services from an entity on the State's ETPL. In some circumstances involving work-based training, such as OJT, customized training, registered apprenticeship, incumbent worker training and transitional jobs, the Local Board may contract out the training services. The section allows for a Local Board itself to

provide the training services if it receives a waiver from the Governor. Local Boards must coordinate funding for ITAs with funding from other Federal, State, local, or private job training programs or sources to assist individuals in obtaining training services.

§ 680.310 Can the duration and amount of Individual Training Accounts be limited?

Proposed § 680.310 maintains the State and local flexibility to impose limits on ITAs that exists under WIA.

§ 680.320 Under what circumstances may mechanisms other than Individual Training Accounts be used to provide training services?

Proposed § 680.320(a) discusses the exceptions to the otherwise required use of an ITA for training. In situations covered by these exceptions, a contract for services may be used to provide for training. The exceptions include:

1. OJT, which could include placing participants in a registered apprenticeship,

customized training, incumbent worker training, or transitional jobs.

2. Where a Local Board determines there are an insufficient number of eligible providers in the local area to accomplish the purpose of an ITA. The local plan must describe how this determination was made and the process used for contracting for services. This exception maintains the same language as WIA.

3. If the Local Board determines a CBO or other private organization provides effective training services to individuals with barriers to employment. The Local Board must develop criteria to show that the program is effective.

4. Training for multiple individuals in in-demand industry sectors or occupations, as long as the contract does not limit the individual's consumer choice.

5. Circumstances in which a pay-for-performance contract is appropriate, consistent with § 683.510.

Proposed § 680.320(b) includes the term "individuals with barriers to employment" in place of the term "special participant," as used under WIA. "Individuals with barriers to employment" is broader than "special participants." "Individuals with barriers to employment" includes: displaced homemakers (see § 680.630); low-income individuals; Indians, Alaska Natives, and Native Hawaiians; individuals with disabilities; older individuals; ex-offenders; homeless individuals; youth who are in or have aged out of the foster care system; individuals who are English learners, have low literacy levels, or face substantial cultural barriers; eligible MSFWs; individuals within 2 years of exhausting lifetime eligibility under TANF; single parents (including pregnant women); long-term unemployed individuals; and members of other groups identified by the Governor.

§ 680.330 How can Individual Training Accounts, supportive services, and needs-related

payments be used to support placing participating adults and dislocated workers into a registered apprenticeship program and support participants once they are in a registered apprenticeship program?

This regulation is designed to ensure States and local areas have the flexibility to serve individuals in both being placed into a registered apprenticeship as well as to assist currently registered apprentices. WIOA provides a new opportunity for registered apprenticeship programs to automatically qualify to be placed on the State's ETPL, allowing ITAs to support participants in registered apprenticeship programs, and more directly connecting apprenticeship programs to job seekers in one-stop centers. Some apprenticeship programs are with a single employer, whereas others may operate through a joint labor-management organization where

participants are selected for the apprenticeship but not immediately hired by a specific employer. The Department is seeking comment on how registered apprenticeship programs and individuals enrolled or seeking to be enrolled in such programs may be best served within the one-stop delivery system.

Proposed § 680.330(a) states that participants may use an ITA to receive training at a pre-apprenticeship program that is on the State's ETPL. Pre-apprenticeship programs provide training to increase math, literacy, and other vocational skills needed to gain entry to a registered apprenticeship program. A pre-apprenticeship program funded with an ITA must have at least one registered apprenticeship partner; such pre-apprenticeship programs must possess or develop a strong record of enrolling their pre-apprenticeship graduates into a registered apprenticeship program. The Department is also open to comment on how pre-apprenticeship programs and individuals enrolled or seeking to be enrolled in such programs may be best served within the one-stop delivery system.

Proposed § 680.330(b) explains that the cost of tuition may be paid through an ITA to the

training provider involved in a registered apprenticeship program. In such instances, the training provider may be an employer, a joint labor-management entity, a labor organization, or an outside training provider.

Proposed § 680.330(c) states that supportive services may be provided to support the placement of a participant into a registered apprenticeship program, consistent with the rules governing supportive services in subpart H.

Proposed § 680.330(d) explains that needs-related payments may be provided to support the placement of a participant into a registered apprenticeship program, consistent with the rules governing needs-related payments in subpart H.

Proposed § 680.330(e) provides a citation to the regulations on using OJT funds with registered apprenticeships.

§ 680.340 What are the requirements for consumer choice?

Proposed § 680.340 largely restates the consumer choice requirements established under WIA. The term "career planner," used in WIOA, replaces the term "case manager," used in WIA. Proposed § 680.340(e) provides that one-stop operators may coordinate funding for ITAs with other funding sources in order to assist the individual in obtaining training services.

Proposed § 680.340(f) requires that priority consideration be given to programs that are aligned with in-demand industry sectors or occupations in the local area.

5. Subpart D – Eligible Training Providers

This part describes the methods by which organizations qualify as eligible providers of training services under WIOA. It also describes the roles and responsibilities of the State and Local Boards in managing this process and disseminating ETPLs. The State ETPL and the related eligibility procedures ensure the accountability, quality, and labor-market relevance of programs of training services that receive funds through WIOA title I-B. The regulations emphasize that the list and accompanying information must be easily understood and disseminated widely, in order to maximize informed consumer choice and serve all significant population groups.

The State plays a leadership role in ensuring the success of the eligible provider system in partnership with Local Boards, the one-stop system, and its partners. The Governor must establish eligibility criteria and procedures for initial determination and renewals of eligibility for training providers and training programs to receive funds under WIOA title I-B. In doing so, the Governor may establish minimum performance levels for eligibility and the Department

encourages Governors to do so. In establishing minimum performance levels for eligibility, the Govenor should take into consideration the need to serve targeted populations. The Local Board may establish additional performance levels for program eligibility within a local area.

The proposed regulations implement WIOA sec. 122 and refer to WIOA secs. 107, 116, and 134 where those sections affect provider eligibility, the ETPL, the use of ITAs, and the inclusion of registered apprenticeship programs on the ETPL. In § 680.410, the regulations clarify that all training providers, including those operating under the ITA exceptions, must qualify as eligible providers, except for those engaged in OJT and customized training (for which the Governor must establish qualifying procedures as discussed in § 680.530). The proposed regulations also explain how registered apprenticeship programs, which WIOA treats differently than other providers in some respects, are to be included in the list. Finally, the regulations describe how the State ETPL must be disseminated with accompanying performance and cost information. The performance information

must be presented in a way that is easily understood, in order to maximize informed consumer choice and serve all significant population groups.

Separately, ETP performance reports, which require providers to supply performance information for all individuals enrolled in a program are addressed in § 677.230.

In response to concerns expressed by stakeholders that some providers of training would face difficulties in participating in this WIOA-revised system, the Department has clarified the interrelated eligibility requirements and explained that while WIOA places an emphasis on quality training as measured by performance criteria, State and Local Boards and training providers must work together in attaining this goal. The proposed regulations emphasize the Governor's discretion in offering financial or technical support to training providers where the information requirements of this section result in undue cost or burden. Making a wide variety

of high-quality training programs available to participants will increase customer choice and that training providers may find performance information useful to improve their programs of study, which in turn will provide a direct benefit to participants. The Department also encourages the Governor to work with ETPs to return aggregate performance information to the provider in ways that will help the training providers improve their program performance. Given that training providers may have many programs of study within their institution, the department is seeking comment on ways that States can help streamline performance reporting for training providers and minimize the burden associated with reporting on multiple programs of study. The State and Local Boards must work together to ensure sufficient numbers and types of training providers and programs in order to maximize customer choice while maintaining the quality and integrity of training services. In addition, the proposed regulations explain that CBOs have the opportunity to deliver training funded under WIOA through contracts for services rather than ITAs, provided the local area determines this is necessary to meet local customer needs and also that the provider meets training

performance requirements. Because of WIOA's emphasis on ensuring the provision of quality training, and the importance of using performance criteria to obtain such quality, the Department does not intend to waive any of the requirements of this section. The Department is seeking comment on possible adaptations of ETP eligibility and reporting requirements to ensure small CBOs, especially those serving hard to serve participant populations, have the capacity to qualify as ETPs.

§ 680.400 What is the purpose of this subpart?

The workforce development system established under WIOA emphasizes informed consumer choice, job-driven training, provider performance, and continuous improvement. The quality and selection of providers and programs of training services is vital to achieving these core principles. As required by WIOA sec. 122, proposed § 680.400 explains that States, in partnership with Local Boards, must identify providers of training services that are qualified to receive WIOA funds to train adults and dislocated workers. Therefore, WIOA requires that each State must maintain a list of ETPs. The list must be accompanied by relevant performance and cost information and must be made widely available, including in electronic formats, and presented in a way that is easily understood, in order to maximize informed consumer choice and serve all significant population groups.

§ 680.410 What entities are eligible providers of training services?

Proposed § 680.410 defines the types of entities that may be considered eligible to provide training services and the specific funds to be used for this purpose. This proposed section explains

that training providers, including those operating under the ITA exceptions, must qualify as eligible providers, except for those engaged in OJT and customized training (for which the Governor must establish qualifying procedures as discussed in § 680.530). The proposed regulations identify registered apprenticeship programs as included in the list as long as the program remains registered. This is further explained in proposed § 680.470.

Proposed paragraph (a) explains that only providers that the State determines to be eligible, as required in WIOA sec. 122, may receive training funds under WIOA title I-B. This refers to funds used to provide training for adult and dislocated worker participants who enroll in a program of training services. Proposed paragraph (a) states that the Governor will establish the criteria and procedures for determining eligibility. These criteria must take into account, at a minimum the items in WIOA sec. 122(b)(1)(A). Under the requirements of WIOA sec. 122, the procedures for determining eligibility of providers are established at the State level and include application and renewal procedures, eligibility criteria, and information requirements.

Proposed paragraphs (a)(1) through (4) list the categories of potentially eligible training entities. This list is largely unchanged from WIA. Potentially eligible entities include post-secondary education institutions, registered apprenticeship programs, other public or private providers of training, Local Boards that meet certain conditions, and CBOs or private organizations providing training under contract with the Local Board.

Proposed paragraphs (b)(1) and (2) specify that these eligibility requirements apply to adult and dislocated worker funds. The requirements apply to both participants who seek training using ITAs and those who seek training through the exceptions described in proposed

§§ 680.320 and 680.530. Under WIOA sec. 134(c)(3)(G), limited exceptions allow local areas to provide training through a contract for services rather than ITAs in order to maintain consumer

choice. These exceptions include: OJT training, customized training, incumbent worker training, or transitional employment; instances where the Local Board determines there are insufficient numbers of eligible providers of training services in the local area; where the Local Board determines an exception is necessary to meet the needs of individuals with barriers to employment (including assisting individuals with disabilities or adults in need of adult education and literacy services); where the Local Board determines that it would be most appropriate to award a contract to an institution of higher education or other eligible provider to facilitate the training of multiple individuals in in-demand industry sectors or occupations (where the contract does not limit customer choice); and, for pay-for-performance contracts.

Proposed paragraph (b)(2) explains that the requirements to become an eligible provider of training services apply to all organizations providing training to adults and dislocated workers, with the specific exception for registered apprenticeship programs. WIOA makes a change from WIA in that registered apprenticeship programs must be included and maintained on the list for

as long as the program remains registered. Registered apprenticeship programs are not subject to the same application and performance information requirements as other ETPs. However, because it is possible that particular registered apprenticeship programs may prefer not to be included on the list, the proposed regulation requires registered apprenticeship programs to indicate their interest in being on the State list, according to a mechanism established by the Governor. The pertinent requirements for registered apprenticeship programs are explained in proposed § 680.470.

§ 680.420 What is a "program of training services"?

Proposed § 680.420 defines the term "program of training services," which is used throughout this part. The Department explains that a program of training services includes a

structured regimen that leads to specific outcomes. Our definition reinforces a key principle of WIOA to improve accountability and performance. Proposed paragraphs (a) through (c) align the outcomes for a program of training services with the performance requirements described in WIOA sec. 116(b)(2)(A). These potential outcomes include post-secondary credentials, industry-recognized credentials, employment, and measurable skill gains toward credentials or employment.

§ 680.430 Who is responsible for managing the eligible provider process?

Proposed § 680.430 explains the roles of the Governor and Local Boards in administering the eligible provider process. Throughout this subpart, the Department emphasizes the Governor's discretion, in consultation with stakeholders, to establish eligibility procedures. The eligible provider process under WIOA sec. 122 requires the Governor to establish eligibility procedures and to clarify State and Local Board roles and responsibilities. In various sections, WIOA assigns responsibilities to Local Boards concerning ETPs and identifies additional

optional activities that may be undertaken by Local Boards. For the convenience of stakeholders and the public, the Department has listed in proposed § 680.430 these required and potential activities.

Proposed paragraph (a) explains the Governor's responsibilities for managing the process for determining eligibility, developing and maintaining the State's list of ETPs, and disseminating the list to Local Boards, as required by WIOA sec. 122. In keeping with WIOA secs. 122(a)(1) and (c)(1), proposed paragraph (a) further requires that Governors consult with the State Board when establishing these procedures. Proposed paragraph (b) authorizes the Governor to designate a State agency to carry out the requirements of this section. While WIOA sec. 122 does not address this point, the Department anticipates that most States will work through a designated State agency (or

appropriate State entity) to administer the requirements of this section. The Department proposes paragraph (b) to make this option explicit.

Proposed paragraphs (b)(1) through (5) describe the State's responsibilities for developing and maintaining the State list of providers. The State may establish minimum performance levels. The State is responsible for determining if such performance targets are met. It is also the State's responsibility to determine whether accurate information has been submitted, take enforcement actions as needed, and disseminate the list to the Local Boards, the one-stop system, its partner programs, and the public. This includes dissemination through Web sites and searchable databases and any other means the State uses to disseminate information to consumers. Under WIA, similar responsibilities were primarily assigned to the Local Workforce Boards. In establishing greater accountability and flexibility at the State level, WIOA sec. 122 specifically requires the State to manage the ETP process. Proposed paragraph (b) describes

these responsibilities and notes the Governor's primary role in exercising these responsibilities, including the assignment of duties to be undertaken by Local Boards.

Paragraph (c) identifies the required responsibilities of Local Boards, which are found in WIOA secs. 107 and 134. These include responsibilities assigned to Local Boards statutorily as well as responsibilities that may be assigned by the Governor. Proposed paragraph (c)(1) makes clear that the Local Board must carry out procedures assigned to it by the State, as provided for under WIOA sec.122(c)(1). The Department provides examples of the responsibilities that the Governor may choose to assign to Local Boards, including duties similar to those undertaken by Local Boards under WIA.

Proposed paragraph (c)(2) explains the Local Boards' responsibility to work with the State to ensure that there are sufficient number and variety of programs to provide participants, as

consumers, adequate choice among providers, as described in WIOA sec. 107. Local Boards are charged with working with the State to ensure that there are sufficient numbers and types of providers to meet the skill development needs of adults and dislocated workers, including those who are disabled and/or require adult literacy assistance. This proposed paragraph emphasizes that Local Boards and the State must work together to ensure adequate consumer choice.

Proposed paragraph (c)(3) explains, as required by WIOA sec. 134(a)(2)(B), that Local Boards must also ensure that the State' eligible training provider list is disseminated publicly through the local one-stop system, and its partner programs. The list is a tool to assist one-stop customers in evaluating training programs and provider options. The dissemination of the list is also discussed under proposed § 680.500.

Proposed paragraph (d) explains the roles that a Local Board may choose to exercise in the eligible provider process. The Governor's procedure may not prevent Local Boards from exercising these options.

Proposed paragraph (d)(1) emphasizes the potential for Local Board input into the Governor's development of the eligible provider procedure. WIOA sec. 122(e) requires the Governor to provide an opportunity for interested members of the public to make recommendations and submit comments regarding the eligibility procedure. Although not explicitly addressed in the WIOA sec. 122, the Department interprets its language to encompass Local Boards and thus have included this requirement in the proposed paragraph.

Proposed paragraphs (d)(2) and (3) include the provisions at WIOA sec. 122(b)(3), which allow Local Boards to set additional eligibility criteria, information requirements, and minimum performance levels for local providers beyond what is required by the Governor's procedure.

Stakeholders and the public must note that any additional requirements imposed by a Local Board

will only affect a program's eligibility and performance requirements within the local area.

§ 680.440 What are the transition procedures for Workforce Investment Act-eligible providers to become eligible under the Workforce Innovation and Opportunity Act?

Proposed § 680.440 explains the procedure established by WIOA sec. 122(c) for training providers that were eligible as of the date WIOA was enacted, July 21, 2014, to continue their eligibility under WIOA. The Department anticipates the majority of providers previously eligible under WIA will be affected by this transition.

Proposed paragraph (a) explains that the Governor may establish a transition period and states that providers that were eligible on July 21, 2014 will remain eligible under WIOA until

December 31, 2015, or such earlier date as the Governor may set. Proposed paragraph (b) explains that in order to retain eligibility after the transition period, these providers will be subject to the application procedure established by the Governor for providers that have previously been found eligible, as further explained in proposed § 680.460. Proposed paragraph

(c) explains that providers that have previously been found eligible are not subject to the initial eligibility procedures, as described in proposed § 680.450. As discussed in § 680.450, the initial eligibility procedures apply only to providers that were not previously eligible under WIA or WIOA.

§ 680.450 What is the initial eligibility procedure for new providers?

Proposed § 680.450 describes the process for adding "new"' providers to the ETPL (i.e., those that have not previously been found eligible under sec. 122 of either WIA or WIOA).

Such providers must first apply for initial eligibility according to procedures set by the Governor. In

accordance with WIOA sec. 122(b)(4), this proposed section describes the factors the Governor must take into consideration in developing this procedure and take into account in setting criteria for initial eligibility. Eligibility is determined on a program-by-program basis for each provider. Proposed § 680.450 distinguishes between registered apprenticeship programs seeking inclusion on the list and other providers. Registered apprenticeship programs, consistent with WIOA sec. 122(a)(3), are not subject to the initial eligibility application procedure.

However, registered apprenticeship programs are required to indicate their interest to be included in the ETPL, according to a mechanism established by the Governor, as discussed in § 680.470.

Proposed paragraph (a) explains that the Governor's procedure must require that providers of training seeking initial eligibility submit required information in order to receive initial eligibility.

Proposed paragraph (b) explains the exception for providers who are carrying out registered apprenticeship programs under the National Apprenticeship Act. Such programs are included and maintained on the list of eligible providers of training for as long as the program remains registered. Therefore, registered apprenticeship programs are not subject to a period of initial eligibility or to initial-eligibility procedures. Rather, the Department proposes paragraph

(b) to require the Governor to establish a procedure whereby registered apprenticeship programs may indicate their interest to be included and maintained on the list. This requirement is further discussed in § 680.470.

Proposed paragraph (c) explains the requirement that the Governor must consult with Local Boards and solicit public comment in determining the initial eligibility procedure. While the Governor is responsible for developing the initial eligibility procedure, input by the Local Board and public comment remain important for shaping a public workforce system that is responsive to local

needs. The Local Board is responsible for working with the State to ensure that there are sufficient numbers and types of providers of career and training services, as required by WIOA sec. 107(d)(10)(E) and described in proposed § 679.370(m). Therefore, the Department is requiring that the Governor consult with Local Boards about the initial eligibility procedure in order to maximize consumer choice at the local level. This is also in keeping with WIOA sec. 122(e) on the requirements for public comment. In addition, although WIOA does not address this point, the Department proposes requiring the Governor to describe the procedure, eligibility criteria, and information requirements for initial eligibility in the State Plan. Although States will need a separate mechanism for public comment during the first year of implementation, in subsequent years the State Plan process will afford the opportunity to solicit comments and recommendations from key stakeholders. In addition, the State Plan

submission and review process allows the Department to ensure compliance with statutory and regulatory requirements and identify promising practices and technical assistance needs.

Proposed paragraph (d) explains that the Governor must establish criteria and State requirements for non-exempt providers seeking initial eligibility. These initial requirements apply to providers that were not previously eligible under this section (or sec. 122 of WIA, as in effect on the day before the enactment of WIOA).

Proposed paragraph (e) describes the factors that the Governor must take into account in establishing the criteria for determining initial eligibility. For those institutions that are not exempt from complying with the ETP application process, the State must establish consistent and uniform criteria for providers seeking initial eligibility. The information that must be submitted to the State for review will be defined by the Governor, but must, at a minimum, address factors related to program elements included in both WIOA secs. 122 (b)(4)(D) and 116(b)(2)(A)(i)(I)- (IV). The Department has listed these required elements in proposed paragraphs (e)(2) through (5). The

elements taken from WIOA sec. 122 include information addressing factors related to program performance indicators, any partnership a program has with a business, attributes indicating high quality training services and credentialing, and the alignment of the program's services with in-demand industry sectors. WIOA requires that providers provide "verifiable program-specific performance information." The Department is interested in comments about

the types of verifiable program specific-information this would include. The Department is particularly interested in the methods of providing verifiable information that are the least costly to the training provider and the easiest to verify to reduce the cost to the State or local area. The Department has added a requirement that the applicant provide a description of the program.

The Department thinks this information is not burdensome and is essential to enable customers to understand whether the program meets their training needs.

Proposed paragraph (f) describes the Governor's discretion to establish minimum performance standards. As with the application procedures described in § 680.460, the Governor may establish minimum performance levels in the initial eligibility procedures, and the Department encourages them to do so.

Proposed § 680.450(g) emphasizes the time limit for initial eligibility, which is 1 fiscal year for a particular program, per WIOA sec. 122(b)(4)(B).

Proposed paragraph (h) clarifies that after the period of initial eligibility, these training providers are subject to the Governor's application procedure, described at proposed § 680.460 in order to remain eligible.

§ 680.460 What is the application procedure for continued eligibility?

Proposed § 680.460 explains the detailed application process for previously WIA-eligible providers to remain eligible under WIOA. Eligibility is determined on a program-by-program basis for each provider.

Proposed paragraphs (a)(1) and (2) list the two groups of providers that are subject to the requirements of proposed § 680.460. These include new training providers that were previously eligible under WIA (following the Governor's transition period, which ends December 31, 2015 or such earlier date established by the Governor) as well as new training providers whose initial eligibility expires after 1 fiscal year.

Proposed paragraphs (b)(1) and (2) explain that the Governor is required to gather and consider input from Local Boards, providers, and the public, including representatives of business and labor organizations. The Local Board is responsible for working with the State to

ensure that there are sufficient numbers and types of providers of career and training services, as required by WIOA sec. 107(d)(10)(E) and described in proposed § 679.370(m). Therefore, the Department is requiring that the Governor consult with Local Boards regarding training provider eligibility procedures in order to maximize consumer choice among quality training providers at the local level. This is also in keeping with WIOA sec. 122(e) regarding the requirements for public comment. While WIOA does not specify a timeframe within which the consultation and determination must be completed, proposed paragraph (b)(3) requires the Governor to establish a timeframe for that purpose while leaving the amount of time to the Governor's discretion. The same requirements for Local Board consultation and a public comment period are described above in connection with proposed § 680.450(c) for the Governor's development of initial eligibility procedures.

Proposed paragraph (c) clarifies that registered apprenticeship programs are exempted from

these application procedures. Under WIOA sec. 122(a)(3), registered apprenticeship programs must be included and maintained on the State list for as long as the program remains registered. While registered apprenticeships are considered eligible, not all registered apprenticeship sponsors may wish to be included. As described in § 680.470, the Department proposes that the Governor's procedure must include a means for registered apprenticeship program to indicate interest in being included on the list.

Proposed paragraph (d) explains that the Governor's procedure must describe the roles of the State and local areas in the application and eligibility process. WIOA gives the Governor discretion to assign some of the responsibility for receiving, reviewing, and making eligibility determinations to local areas. WIOA emphasizes the Governor's discretion in establishing eligibility procedures.

Proposed paragraph (e) requires the Governor's procedure to be described in the State Plan. Although WIOA does not address this point, the Department proposes requiring the Governor to describe the procedure, eligibility criteria, and information requirements for initial eligibility in the State Plan. Although States will need a separate mechanism for public comment during the first year of implementation, in subsequent years the State Plan process will afford the opportunity to solicit comments and recommendations from key stakeholders. In addition, the State Plan submission and review process allows the Department to ensure compliance with statutory and regulatory requirements and identify promising practices and technical assistance needs.

Proposed paragraph (f) explains the factors that the Governor must take into account in developing the eligibility criteria. These include nine required factors and any additional factors that Governor considers appropriate. The proposed language closely tracks the language from WIOA sec. 122(b), providing a comprehensive description of the requirements for the application process. WIOA sec. 122(b) includes multiple cross-references to WIOA sec. 116 which identifies required performance accountability measures. Proposed paragraph (f)(1) generally describes the kinds of

performance information which training providers must submit as part of their application, which pertain to participants receiving training under WIOA title I-B. The Department recommends the Governor's procedure emphasize these performance indicators as a way of establishing minimum standards and a means for comparison among training providers offering similar training in similar areas. The Department recommends States use these measures to ensure performance accountability, continuous improvement, training provider quality, and informed consumer choice. The Department anticipates that complete performance data as required under (f)(1) may not be available until PY 2018, given the lag time inherent in

the performance indicators. Proposed pargraph (f)(1) allows the Govenor to take into account alternate factors for any performance information that is not yet available until such performance data are available. The Department seeks comment on alternate factors related to performance that may be used to establish eligibility during this time.

Proposed paragraphs (f)(2) through (10) list the other factors that the Governor's criteria must take into account. These include the need to ensure access to training services in rural areas, information regarding Federal and State training programs other than within WIOA title I- B, alignment with in-demand industry sectors, State licensure requirements, encouraging industry-recognized credentials, provision of post-secondary credentials, the quality of program and training services, and meeting the needs of individuals with barriers to employment.

Proposed paragraph (f)(10) requires the Governor's criteria to take into account whether the providers timely and accurately submitted eligible training provider performance reports, as required under WIOA sec. 116(d)(4). This requirement is consistent with the requirement under WIOA sec. 122(b)(1)(A)(ii) that the criteria to be taken into account include the outcomes of the training programs for students in general with respect to employment and earnings under the indicators of performance described in WIOA sec. 116(d)(2). The ETP reports provide information on these

employment and earnings outcomes for all individuals in a program of study, and the failure to submit such reports on a timely and accurate basis would undermine the ability of the Governor to take such outcomes into account. The Department seeks comment on how best to apply the timely and accurate submission of these ETP performance reports as a factor for eligibility.

Proposed paragraph (f)(11) explains the Governor's discretion to take into account other factors. This paragraph echoes the key principles of the ETPL and WIOA to ensure performance accountability, to meet the needs of local employers and participants, and to ensure informed customer choice.

Proposed paragraph (g) lists the information that training providers are required to provide as part of their application. As discussed in paragraph (k), the Governor has broad discretion to prescribe additional types of information.

Proposed paragraph (h) establishes two additional requirements concerning performance, cost, and information collection. Proposed paragraph (h)(1) states that eligible providers must submit performance and cost information required by paragraph (g) and the Governor's procedure to the State (WIOA secs. 122(b)(1) and (2)). In accordance with the State accountability and flexibility intended by WIOA, the timeframe and manner for submitting this information is to be determined by the State but at least every 2 years. Proposed paragraph (h)(2) states that the collection of information required to demonstrate compliance with the criteria cannot be unduly burdensome or costly to providers, citing to WIOA sec.

122(b)(1)(J)(iv).

Proposed paragraph (i) explains that the Governor's eligibility procedure must provide for

the State to biennially review training provider eligibility information and assess the renewal of training provider eligibility, per WIOA sec. 122(c)(2). In keeping with WIOA's emphasis on providing discretion to the Governor, the Department has not prescribed in paragraph (i) the timeline and manner in which this biennial review takes place. These particulars are to be established by State procedure. The Governor or State agency is not required to establish minimum levels of performance, although the Department encourages them to do so. If minimum levels are established, the Governor's procedure must state these requirements and the State may require eligible providers to meet them in order to remain eligible.

Proposed paragraph (j) requires the Governor's procedure to verify the status of registered apprenticeship programs as a part of the biennial review of the State list. Although registered apprenticeship programs are not subject to the same review procedures as other providers, the State must verify the status of the registered apprenticeship programs in order to remove from the list any apprenticeship programs that are no longer registered.

Proposed paragraph (k) establishes that, as was the case under WIA, Local Boards may set additional criteria for eligibility to provide services in a local area. WIOA includes this provision at sec. 122(b)(3).

Proposed paragraph (l) explains that the Governor may establish procedures for providing technical assistance in order to assist eligible providers in meeting these requirements. This is in addition to financial assistance the Governor may provide, as described in proposed § 680.490.

§ 680.470 What is the procedure for registered apprenticeship programs that seek to be included on the State's eligible training provider list?

WIOA encourages registered apprenticeship programs to be active partners in the public workforce system. These programs are proven job-driven strategies that provide workers with career

pathways and opportunities to earn while they learn. Under WIOA sec. 122(a)(3), a registered apprenticeship program is included on the list of ETPs so long as the program remains registered. This allows a participant enrolled in a registered apprenticeship who is eligible to use WIOA title I-B funds to use those funds toward apprentice training, consistent with their availability and limitations as prescribed by proposed § 680.300. The use of ITAs and other WIOA title I-B funds toward apprenticeship training is further described in proposed § 680.330. Registered apprenticeship programs differ from other training providers in some respects,

notably that a participant's enrollment occurs only through an agreement among the participant, the registered apprenticeship program sponsor, and an employer.

Proposed § 680.470 explains how registered apprenticeship programs are included and maintained on the ETPL. Registered apprenticeship programs are not subject to the application procedures and information requirements of other training providers to be included on the ETPL, in light of the detailed application and vetting procedures under which apprenticeship programs become registered.

Proposed paragraph (a) requires registered apprenticeship programs to indicate interest in being on the State list of ETPs. While registered apprenticeship programs are automatically eligible, not all registered apprenticeship sponsors may wish to be included on the list. The Department proposes that the Governor's procedure include a mechanism for registered apprenticeship programs to indicate their interest.

Proposed paragraph (b) explains that a registered apprenticeship program will remain on the list until it loses its registration or notifies the State that it no longer wishes to be included on the list.

Proposed paragraph (c) explains that when a registered apprenticeship program is included on the State ETPL, this allows an individual who eligible to use WIOA title I-B funds to use those

funds toward apprentice training, consistent with their availability and limitations as prescribed by proposed § 680.300.

Proposed paragraph (d) addresses performance reporting requirements for apprenticeship programs. Registered apprenticeship programs are not subject to the same information reporting requirements as other training programs. However, in light of WIOA's emphasis on performance accountability and informed customer choice, the Department encourages

Governors to consult with the State and Local Boards, the Department's Office of Apprenticeship, recognized State apprenticeship agencies (where they exist in the Governor's State), or other State agencies, to establish voluntary reporting of performance information.

§ 680.480 May an eligible training provider lose its eligibility?

Proposed § 680.480 describes enforcement provisions that are largely unchanged from WIA. The Governor has the ability to remove training providers or programs of training services from the State list according to the Governor's eligibility and review procedures. Under WIOA sec. 122(f), States must remove from the eligibility list any providers that willfully supply false performance information or that substantially violate requirements of WIOA. Under WIOA, a provider may also be removed from the list following the Governor's biennial review of the provider's program. These provisions support key principles of WIOA by reinforcing performance accountability and ensuring the high quality of training programs made available.

Proposed paragraph (a) affirms that a provider must deliver positive results and provide accurate information in order to maintain eligibility.

Proposed paragraph (b) explains that if a provider intentionally provides inaccurate

information or substantially violates any provision of WIOA or its regulations the provider must be removed from the State list for a period of not less than 2 years and is liable to repay all adult and dislocated worker funds it received during the period of non-compliance. The Governor must specify in the procedures which individual or entity is responsible for making these determinations and the process by which the determination will be made, which must include an opportunity for a hearing.

Proposed paragraph (c) allows the Governor to remove a program or programs from the list for failing to meet State-established criteria or performance levels. The Department seeks comment on how to strengthen enforcement with non-compliant providers over time.

Proposed paragraph (d) explains that the Governor must establish an appeal procedure for providers to appeal a denial of eligibility under this section. An appeals process is required by WIOA sec. 122 (c)(1). Proposed § 683.630(b) explains the appeal process for the denial or termination of a training provider's eligibility.

Proposed paragraph (e) provides that a local area may remove a program or programs from the list for failing to meet higher local standards. The local area must also provide the program with an appeal process.

§ 680.490 What kind of performance and cost information must eligible training providers provide for each program of training?

Proposed § 680.490 describes the performance information that providers are required to submit to the State in order to establish or renew eligibility, as described in WIOA sec.

122(b)(2).

Proposed paragraph (a) requires ETPs to submit performance information at least every 2 years, according to procedures established by the Governor. While the Governor may require reporting at more frequent intervals, the Department interprets WIOA sec. 122 to require that provider performance information for eligibility purposes must be submitted to the State at least biennially.

Proposed paragraphs (b)(1) through (4) list the program-specific performance information, described in WIOA sec. 122, that must be submitted by training providers. Proposed paragraph (b)(1) includes a cross-reference to the performance elements described at

WIOA secs. 116(b)(2)(A)(i)(I)-(IV). These elements are further discussed in proposed § 680.460(g)(i) through (iv). Proposed paragraphs (b)(2) through (4) list additional information that must be supplied by providers; this includes information on post-secondary credentials offered, program costs, and the completion rate for WIOA participants in the program.

Proposed paragraph (c) explains that the Governor may require any additional performance information that he or she considers appropriate for determining or renewing eligibility. Separate reporting requirements for the State's ETP performance reports under WIOA sec. 116(d)(4) are addressed in § 677.230.

Proposed paragraph (d) emphasizes the collaborative relationship between a State and its training providers and explains that the Governor must assist providers in supplying the information required of them under WIOA and the proposed regulations. Proposed paragraph (d)(1) states the statutory requirement, at WIOA sec. 122(b)(1)(J)(iv), that the Governor must provide access to cost-effective methods for the collection of information. Proposed paragraphs (d)(2) and (3) explain that the Governor may provide technical and other assistance to providers in helping them to meet the performance requirements and that funds reserved for statewide activities under WIOA sec. 134

(a)(2)(B) may be used for this purpose. While WIOA emphasizes performance accountability, it is also important to assist ETPs in maintaining their eligibility, especially as training providers adjust to the more demanding reporting requirements of WIOA.

§ 680.500 How is the State list of eligible training providers disseminated?

The public's ability to access and easily understand the State ETPL and its accompanying information are cornerstones of informed customer choice and transparency. In keeping with WIOA's intent for program alignment and service integration, the Department proposes

strengthening the distribution of the list to emphasize dissemination to the public through one- stop partner programs in addition to the one-stop system. The ETP performance reports at WIOA sec. 116(d)(4) are addressed separately in § 677.230, which requires the coordinated dissemination of the performance reports with the ETPL and the information required to accompany the list.

Proposed § 680.500 explains the requirements for distributing the list and accompanying information about the programs and providers on the list. These requirements recognize the central importance of the list as the means to provide participants, as consumers of employment and training activities, effective choices among programs and providers of these services. As discussed previously, informed consumer choice is a key principle under WIOA.

Proposed paragraph (a) requires the State to disseminate the list with accompanying performance and cost information to Local Boards in the State and to members of the public online including Web sites and searchable databases, through whatever means the State uses to disseminate information to consumers, including the one-stop delivery system and its program partners. Local Boards must disseminate the list through the one-stop system as well, as described in proposed § 680.430(c)(3). Proposed paragraph (b) requires the list to be updated regularly, while provider

eligibility is reviewed biennially. The Department is making a distinction between the eligibility of individual providers and updates to the actual list because the Department anticipates the list may be updated on an on-going basis, even though the review of a particular provider's eligibility status may occur biennially.

Proposed paragraph (c) requires the State list and accompanying information to be easily available to all one-stop customers through the one-stop system and its partner programs. The State list is a key piece of the State one-stop system. As such, it must be made available to

individuals seeking information on training programs as well as participants receiving career services funded under WIOA and other programs. Proposed paragraph (c) further explains that the list must be available to individuals who are eligible for training under WIOA as well as to individuals whose training is supported by other one-stop partners.

Proposed paragraph (d) describes the information that must accompany the list to help participants in making informed choices regarding training programs and providers. Proposed paragraphs (d)(1) through (4) describe the information that must accompany the list, including recognized post-secondary credentials offered, other information as may be required by the Governor's eligibility criteria, and performance and cost information. The information available for programs in the initial eligibility stage will be different from, and less extensive than, the information available from programs in the continuing eligibility stage.

Proposed paragraph (d)(3) includes the requirement that the State must disseminate the provider list with "other appropriate information." The Department interprets this language to include the performance and cost information described at § 680.490.

Proposed paragraph (d)(4) states that the Governor may include any additional information to accompany the list as he or she considers appropriate. The Department encourages States to

include any information that, consistent with WIOA's goal of promoting consumer choice, will assist participants in choosing training activities and providers.

Proposed paragraph (e) requires, as described in WIOA sec. 122(d)(3), that the accompanying information must not reveal personally identifiable information about an individual participant. In addition, disclosure of personally identifiable information from an education record must be carried out in accordance with the FERPA, including the circumstances relating to prior written consent.

The Department is interested in comments on specific ways to structure the accompanying information so that it provides a complete and easily understandable picture of provider performance but is not so detailed or complex that it discourages users from consulting it or limits its utility to the lay person. Should, for example, there be a summary sheet that is easy and quick to read and, if so, what information must be on the summary sheet?

§ 680.510 In what ways can a Local Board supplement the information available from the State list?

Proposed § 680.510 explains that Local Boards may choose to supplement the criteria and information requirements established by the Governor's procedure in order to facilitate informed consumer choice in a local area.

Proposed paragraph (a) states that a Local Board may require that providers of training services furnish additional criteria and information as allowed under WIOA sec. 122(b)(3).

These requirements impact the provision of services in the local area involved.

Proposed paragraphs (b)(1) through (4) explain the type of additional information that the

Local Board may require providers to supply in their application to become eligible. These provisions are largely unchanged from the WIA regulations. The Local Board may request that the provider of training services explain how the training program specifically links to occupations that are in demand within the local area. The Local Board may also request specific program performance and cost information particular to a local area where programs are offered at multiple sites. The Department further explains that Local Boards may request information from training providers that indicates how programs are responsive to these local requirements, as provided for in WIOA sec. 122(b)(3).

§ 680.520 May individuals choose training providers located outside of the local area?

Proposed § 680.520 explains that an individual may choose a training provider located outside the local area, and, in some instances, in other States. States may enter into reciprocity agreements with other States under which providers of training services are allowed to accept ITAs provided by another State. Providers of training services that are located outside the local area may not be subject to State eligibility procedures if the provider has been determined eligible by another State with such an agreement. The option to enter into reciprocity agreements diminishes the burden on States and providers of training services to be subject to duplicative procedures and is allowable under WIOA sec. 122(g). This provision also expands the array of training options available for individuals seeking training.

§ 680.530 What requirements apply to providers of on-the-job training, customized training, incumbent worker training, and other training exceptions?

In proposed § 680.530, the Department explains that providers of OJT, customized training, incumbent worker training, internships, paid or unpaid work experience, or transitional employment

are not subject to the eligibility requirements under WIOA secs. 122(a)-(f), but are required to provide performance information established by the Governor. The Department further explains that the local one-stop operator is required to collect and disseminate information that identifies these providers as meeting the Governor's performance criteria.

Although these providers are not included on the State ETPL they are considered to be eligible providers of training services.

6. Subpart E – Priority and Special Populations

Introduction

The services provided with adult funds can be a pathway to the middle class for low- income adults, public assistance recipients, and individuals who are basic skills deficient. The proposed regulations implement the statutorily-required priority for the use of adult funds. This subpart contains proposed regulations about how participants from certain populations are able to access adult and dislocated worker services and establish priority access to these services.

WIOA sec. 134(c)(3)(E) provides that priority must be given to recipients of public assistance, other low-income individuals, and individuals who are basic skills deficient. Under WIA, this priority applies only when adult funds are limited. Under WIOA, however, priority access to services by members of this group applies automatically. Nonetheless, WIOA allows one-stop operators to provide individualized career services to individuals who are not members of these groups, if determined appropriate by the one-stop operator.

The Department strongly encourages close cooperation between WIOA-funded programs and other Federal and State sources of assistance for job seekers. Coordination between WIOA-funded programs and the TANF program is a crucial element in serving individuals who are on public assistance. TANF is a required partner in the one-stop delivery system. Through close cooperation, each program's participants will have access to a much broader range of services to promote employment retention and self-sufficiency than if they relied only on the services available under a single program.

In this subpart, the Department explains how displaced homemakers may be served with both adult and dislocated worker funds. Under WIOA, a displaced homemaker qualifies as an "individual with a barrier to employment" (see proposed § 680.320(b) and its discussion above).

WIOA provides a focus on serving "individuals with a barrier to employment" to ensure they have opportunities to enter meaningful employment; this term is defined in WIOA sec. 3(24). Additionally, displaced homemakers meet the definition of a "dislocated worker," as defined in WIOA sec. 3(15)(D). The proposed regulations implement WIOA's requirements and effectuate its purpose to aid displaced homemakers, whose work, albeit without a formal connection to the workforce, is recognized for its value, but who may need WIOA services to develop further work skills. WIOA also expands the definition of displaced homemakers to include dependent spouses of the Armed Forces on active duty to ensure they have access to WIOA title I services.

This subpart ensures that veterans and certain service members have access to adult and dislocated worker programs. Under WIOA, as was the case under WIA, veterans receive priority of service in all Department-funded employment and training programs. The proposed regulations describe what is meant by "priority of service." The Department has proposed a regulation consistent with guidance it issued in Training and Employment Guidance Letter (TEGL) 22-04 that separating service members meet the eligibility requirements for dislocated worker activities. This proposed

regulation will ensure that service members will have access to the full array of services available through the one-stop delivery system.

§ 680.600 What priority must be given to low-income adults and public assistance recipients and individuals who are basic skills deficient served with adult funds under title I?

Proposed § 680.600 provides priority access to career services and training services funded under WIOA sec. 134(c)(2)(A)(xii) and adult title I. In § 678.430(b), the Department proposes to categorize these services as individualized career services. WIOA builds on the priority given under WIA to providing training services to low-income individuals and

individuals receiving public assistance. Under WIOA, the priority also extends to individuals who are basic skills deficient.

Proposed § 680.600(a) explains that individualized career services and training services must be given on a priority basis to low-income adults, public assistance recipients, and individuals who are basic skills deficient in the local area under the WIOA adult program. For adults, the term "basic skills deficient" is defined in WIOA sec. 3(5)(B) and applies when an individual is unable to compute or solve problems, or read, write, or speak English, at a level necessary to function on the job, in the individual's family, or in society. Priority must be given regardless of funding levels.

Proposed § 680.600(b) requires States and local areas to establish criteria for providing priority to individualized career services and training services with WIOA adult funds under title

I. The criteria may include other resources and funds for providing career and training-related services in the local area, as well as the needs of specific groups in the local area, as well as other factors the local areas determines appropriate.

Proposed § 680.600(c) clarifies that while priority must be given under WIOA adult funds

to low-income individuals, public assistance recipients, or individuals who are basic skills deficient for individualized career services and training services, the Local Board and Governor may establish a process that also gives priority to other individuals.

§ 680.610 Does the statutory priority for use of adult funds also apply to dislocated worker funds?

Proposed § 680.610 clarifies that the statutory priority for low-income individuals, public assistance recipients, and individuals who are basic skills deficient only applies to the WIOA adult program and not the WIOA dislocated worker program.

§ 680.620 How does the Temporary Assistance for Needy Families program relate to the one- stop delivery system?

Proposed § 680.620 explains how the TANF program relates to the one-stop delivery system. Cooperation among required partner programs is vital to build pathways to the middle class for individuals on public assistance and low-income individuals. Partners, working together, can ensure the best mix of services for each individual seeking to enhance their lives and employment.

Under WIOA, TANF is a required partner in the one-stop system, unless the Governor opts out. TANF provides assistance to needy families and by coordinating closely with WIOA local areas can ensure programs and services include the needs of individuals on public assistance. This section encourages cooperation among the WIOA and TANF programs to maximize services available to participants eligible under both programs.

§ 680.630 How does a displaced homemaker qualify for services under title I?

Proposed § 680.630 explains displaced homemakers' eligibility for dislocated worker activities. A displaced homemaker can qualify for either adult or dislocated worker funds. First, if

an individual meets the definition of a displaced homemaker under WIOA sec. 3(16), the individual is eligible for dislocated worker career and training services. Second, the displaced homemaker may be served with title I adult funds if the individual meets the eligibility requirements for this program; generally priority in the adult program is given to low-income individuals, individuals on public assistance, or if they lack basic work skills. A State may also use reserve funds that target displaced homemakers in which they would be eligible.

Under WIOA, the definition of a displaced homemaker is expanded to explicitly include dependent spouses of a member of the Armed Forces on active duty (as defined in sec. 101(d)(1)

of title 10, United States Code) and whose family income is significantly reduced because of a deployment, a call or order to active duty, a permanent change in station, or the service- connected death or disability of the service member.

§ 680.640 May an individual with a disability whose family does not meet income eligibility criteria under the Act be eligible for priority as a low-income adult?

Proposed § 680.640 explains that under WIOA an individual with a disability whose family does not meet income eligibility criteria will still qualify for priority as a low-income adult if the individual meets the low-income criteria in WIOA sec. 3(36). Additionally, the Department proposes that if an individual with a disability meets the income eligibility criteria for payments under any Federal, State, or local public assistance program that individual will also be eligible for priority as a low-income adult consistent with WIOA sec. 3(36)(A)(i). This includes recipients of SNAP, TANF, and recipients of the Supplemental Security Income program.

§ 680.650 Do veterans receive priority of service under the Workforce Innovation and Opportunity Act?

Proposed § 680.650 builds on the Department's efforts to ensure veterans are entitled to

priority of service in all Department-funded training programs under 38 U.S.C. 4215 and 20 CFR 1010. The proposal states that veterans must receive priority of service in programs for which they are eligible. In programs that require income-based eligibility to receive services, amounts paid while on active duty or paid by the Department of Veterans Affairs (VA) for VR, disability, or other related VA programs are not considered as income when determining low-income status. Generally, this means many separating service members may qualify for the WIOA adult

program because it provides priority for low-income individuals and military earnings are not to be considered income for this purpose.

§ 680.660 Are separating service members eligible for dislocated worker activities under the Workforce Innovation and Opportunity Act?

Proposed § 680.660 explains, consistent with the Department's long-standing policy, that service members exiting the military qualify as dislocated workers. Dislocated worker funds under title I can help separating service members enter or reenter the civilian labor force.

Proposed § 680.660(a) clarifies that a notice of separation, a DD-214 from the Department of Defense, or other appropriate documentation that shows a separation or imminent separation from the Armed Forces qualifies as a notice of termination or layoff required for the dislocated worker definition.

Proposed § 680.660(b) clarifies that a separating service member meets the dislocated worker requirements concerning UC.

Proposed § 680.660(c) clarifies that a separating service member meets the dislocated worker requirement that an individual is unlikely to return to his or her previous industry or occupation.

7. Subpart F – Work-based Training

Introduction

Proposed §§ 680.700 through 680.850 are proposed regulations for work-based training under WIOA. The proposed regulations apply to (OJT) training, customized training, incumbent worker training, and transitional jobs. The proposed regulations include specific information about general, contract, and employer payment requirements. Work-based training is employer- driven with the goal of unsubsidized employment after participation. Generally, work-based training involves a commitment by an employer or employers to fully employ successful participants after they have completed the program. Registered apprenticeship training is a type of work-based training that can be funded in the adult and dislocated worker programs; additionally pre-apprenticeships may be used to provide work experiences that can help participants obtain the skills needed to be placed into a registered apprenticeship.

Work-based training can be an effective training strategy that can provide additional opportunities for participants and employers in both finding high quality work and in developing a high quality workforce. Each of these work-based models can be effectively used to target different job seeker and employer needs. OJT is primarily designed to provide a participant with the knowledge and skills necessary for the full performance of the job. Incumbent worker training is designed to ensure that employees of a company are able to gain the skills necessary to retain employment and advance within the company or to provide the skills necessary to avert a layoff. Customized training is designed to provide local areas with flexibility to ensure that training meets

the unique needs of the job seekers and employers or groups of employers.

Both training providers and OJT providers must be providing the highest quality training to participants. OJT contracts must be continually monitored so that WIOA funds provided through OJT contracts are providing participants with successful employment. It is important that OJTs have a strong ability to provide participants with in-demand skills with opportunities for career advancement and employers with a skilled workforce.

Under WIA, States could apply for a waiver to increase reimbursement amounts of the OJT wage rate. Under WIOA, the statute enables a Governor or Local Board to increase this rate to 75 percent without a waiver. This change is designed to give States and Local Boards

additional flexibility in developing OJT opportunities that work best with the participating employers and in the local economy.

WIOA also explicitly allows for incumbent worker training at the local level. WIOA introduces incumbent worker training as an allowable type of training for a local area to provide. Under WIA, States could use their statewide activities funds to conduct incumbent worker training, and local areas could conduct incumbent worker training with an approved waiver.

Incumbent worker training is designed to either assist workers in obtaining the skills necessary to retain employment or to avert layoffs and must increase both a participant's and a company's competitiveness. Local areas may use up to 20 percent of their local adult and dislocated worker funds for incumbent worker training. In this proposed regulation, the Department seeks to ensure that incumbent worker training is targeted to improving the skills and competitiveness of the participant and increasing the competitiveness of the employer. The training should, wherever possible, allow the participant to gain industry-recognized training experience, and ultimately should lead to an increase in wages. To receive incumbent worker funding under WIOA, an incumbent

worker must have an employer-employee relationship, and an established employment history, with the employer. Incumbent workers are employed at the time of their participation, and the contract funds are paid to the employer for training provided to the incumbent worker either to avert a lay-off or otherwise retain employment. An ideal incumbent worker training would be one where a participant acquires new skills allowing him or her to move into a higher skilled and higher paid job within the company, thus allowing the company to hire a job seeker to backfill the incumbent worker's position. The Departments are seeking comment on the best way to structure these arrangements to maximize the likelihood that this ideal outcome occurs.

WIOA also discusses transitional jobs as a way for adults and dislocated workers with barriers to employment who are experiencing chronic unemployment or have an inconsistent work history to develop a work history and basic work skills essential to keeping a job.

Transitional jobs are time-limited, subsidized employment in the private, non-profit, or public sectors.

§ 680.700 What are the requirements for on-the-job training?

OJT is a type of training that is provided by an employer to a participant. During the training, the participant is engaged in productive work in a job for which he or she is paid, and the training provides the knowledge or skills essential to the full and adequate performance of the job. Studies over the past 3 decades have found that in the United States formal OJT programs have positive employment and earnings outcomes.[2] OJT is a critical tool that can help jobseekers enter into successful employment.

Proposed § 680.700(a) explains that OJT may be provided under contract with an employer

in the public, private non-profit, or private sectors. Under WIOA, the reimbursement level may be raised up to 75 percent of the wage rate, in contrast to 50 percent of the wage rate under WIA. Typically, the OJT contract provides reimbursement to the employer for a portion of the wage rate of the participant for the extraordinary costs of providing training and supervision related to the training.

Proposed § 680.700(b) states that contracts must not be entered into with an employer that received payments under previous contracts under WIOA or WIA if the employer has exhibited a pattern of failing to provide OJT participants with continued long-term employment

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[2] Kleinman, Liu, Mastri, Reed, Reed, Sattar, Ziegler, An Effectiveness Assessment and Cost-Benefit Analysis of Registered Apprenticeship in 10 States, Mathematica Policy Research, July 2012, Prepared for the U.S. Department of Labor, Employment and Training Administration.

as regular employees with wages, employment benefits, or working conditions at the same level as other employees performing the same type of work for the same length of time.

Proposed § 680.700(c) continues the requirement under WIA that OJT contracts must be limited in duration to the time necessary for a participant to become proficient in the occupation for which they are receiving the OJT training. When determining the length of the contract, the Governor or Local Boards must take into account the skill requirements of the occupation, the academic and occupational skill level of the participant, prior work experience, and the participant's individual employment plan.

§ 680.710 What are the requirements for on-the-job training contracts for employed workers?

Proposed § 680.710 is unchanged from the WIA regulations. The proposal identifies the requirements for OJT contracts used to train employed workers.

§ 680.720 What conditions govern on-the-job training payments to employers?

Proposed § 680.720 identifies the conditions that govern OJT payment to employers.

OJT payments are to be compensation to the employer for the extraordinary costs associated with training participants. The Department does not seek to define through this regulation what "extraordinary costs" are, and is seeking public comment on this issue. The Department generally believes extraordinary costs are those costs the employer has in training participants who may not yet have the knowledge or skills to obtain the job through an employer's normal recruitment process.

§ 680.730 Under what conditions may a Governor or Local Board raise the on-the-job training reimbursement rate up to 75 percent of the wage rate?

Proposed § 680.730(a) identifies the factors that a Governor or Local Board must consider and document in determining whether to raise the reimbursement rate for OJT contracts up to 75 percent of the wage rate.

Proposed § 680.730(1) allows for the wage rate to be up to 75 percent after taking into consideration, among other factors, the characteristics of the participants (WIOA sec. 134(c)(3)(H)(ii)(I)), including whether the OJT contract is leading to employment for individuals

with barriers to employment. Proposed § 680.730(2) states that the size of the employer is a factor that must be considered; proposed § 680.730(3) states that the quality of employer- provided training and advancement opportunities is a factor that must be considered. Proposed

§ 680.730(4) states that the Governor or Local Board may consider other factors in determining whether it is appropriate to raise the reimbursement rate. Such other factors may include the number of employees participating, wage and benefit levels of employees both before and after OJT completion, and relation of training to the competitiveness of the participant. Proposed § 680.730(b) requires that the Governor or Local Board must document the factors that they considered when deciding to increase the wage reimbursement levels above 50 percent up to 75 percent. The Department is seeking comments from the public on how the relation of training to the competitiveness of the participant must be analyzed when implementing this provision.

§ 680.740 How can on-the-job training funds be used to support placing participants into a registered apprenticeship program?

Proposed § 680.740(a) clarifies that an OJT contract may be made with a registered apprenticeship program for training participants. OJT contracts are made with the employer, and

registered apprenticeships generally involve both classroom and on-the-job instruction. The OJT contract may be made to support the OJT portion of the registered apprenticeship program. The Department also notes that registered apprenticeship programs vary in length, so the OJT may support the entire duration of training while other means may support the beginning of the registered apprenticeship training. The Department is seeking comments on what an appropriate maximum amount of time would be for OJT funds to be used to support participants in registered apprenticeships.

Proposed paragraph (b) clarifies that in some instances a registered apprenticeship is

operated by the employer and in others it is operated by a training provider with a direct connection to an employer or group of employers. If a participant is in a registered apprenticeship and employed as part of that arrangement, then the OJT must be treated as other OJTs provided for employed workers as described in § 680.710. If a participant is in a registered apprenticeship but is unemployed, the OJT funds may be provided in same manner as other OJTs as described in § 680.700.

§ 680.750 Can Individual Training Account and on-the-job training funds be combined to support placing participants into a registered apprenticeship program?

Local areas may use an ITA to support classroom portions of a registered apprenticeship program and OJT funds may be used to support the on-the-job portions of the registered apprenticeship program. This is to ensure local areas have maximum flexibility in serving participants and supporting their placement into registered apprenticeship programs.

§ 680.760 What is customized training?

Proposed § 680.760 explains that customized training is to be used to meet the special requirements of an employer or group of employers, conducted with a commitment by the employer to employ all individuals upon successful completion of training. The employer must pay for a significant share of the cost of the training.

Proposed § 680.760(a) and (b) are unchanged from WIA. In paragraph (c) under WIA employers were required to pay for not less than 50 percent of the cost of the training, WIOA removes the precise figure and says that the employer must pay for a "significant cost of the training."

§ 680.770 What are the requirements for customized training for employed workers?

Proposed § 680.770 identifies the eligibility requirements for employed workers to receive customized training. There may be instances where a worker is employed but then receives customized training under contract between the local area and the employer. In order for the employed worker to qualify, the employee must not be earning a self-sufficient wage as determined by Local Board policy, the requirements of customized training in proposed

§ 680.760 must be met, and the training must incorporate new technologies, processes, or procedures; skills upgrades; workplace literacy; or other appropriate purposes, as identified by the Local Board. Proposed § 680.770 is unchanged from WIA. The Department is interested in comments that discuss how to distinguish customized training from OJT. Should they focus on different service populations, different training strategies, or different types of jobs?

§ 680.780 Who is an "incumbent worker" for purposes of statewide and local employment and training activities?

Proposed § 680.780 is designed to update the definition of an incumbent worker from WIA. An incumbent worker is employed with the company when the incumbent worker training starts. The Department is seeking comment on the appropriate amount of time an employee must have worked for the employer before being eligible for incumbent worker training. The

Department is proposing a minimum of 6 months, but is seeking substantive comments on this proposal. The Department is also seeking comments on how incumbent worker training should increase the competitiveness of the employee or employer for the purposes of identifying high-quality incumbent worker opportunities.

§ 680.790 What is incumbent worker training?

Proposed § 680.790 discusses the purposes served by and the conditions relating to incumbent worker training as prescribed by WIOA sec. 134(d)(4)(B).

Incumbent worker training is designed to meet the special requirements of an employer (including a group of employers) to retain a skilled workforce or avert the need to lay off employees by assisting the workers in obtaining the skills necessary to retain employment. The employer or group of employers must pay for a portion of the cost of providing the training to incumbent workers.

§ 680.800 What funds may be used for incumbent worker training?

Proposed § 680.800 provides that under WIOA, local areas may use up to 20 percent of their combined total of adult and dislocated worker allotments for incumbent worker training. States may use their statewide activities funds and Rapid Response funds for statewide incumbent worker training activities.

§ 680.810 What criteria must be taken into account for an employer to be eligible to receive local incumbent worker funds?

Proposed § 680.810 provides the criteria a Local Board must use when deciding on using funds for incumbent worker training with an employer. Paragraphs (a) through (c) address participant characteristics, the relationship of the training to the competitiveness of the participant and employer, and other factors that the Local Board determines appropriate. These

factors may include the number of employees in training, wages and benefits (including post-

training increases), and the existence of other training opportunities provided by the employer.

§ 680.820 Are there cost sharing requirements for local area incumbent worker training?

Proposed § 680.820 clarifies that there are cost sharing requirements for employers participating in incumbent worker training to pay for the non-Federal share of the cost of providing training to incumbent workers of the employers.

§ 680.830 What is a transitional job?

Proposed § 680.830 explains that transitional jobs are time-limited work experiences that are subsidized for individuals with barriers to employment who are chronically unemployed or have an inconsistent work history. These jobs may be in the public, private, or non-profit sectors. Transitional jobs can be effective solutions for individuals to gain necessary work experience that they would otherwise not be able to get through training or an OJT contract. The goal is to establish a work history for the individual, demonstrate work success, and develop skills that lead to entry into unsubsidized employment. The difference between a transitional job and an OJT contract is that in a transitional job there is no expectation that the individual will continue his or her hire with the employer after the work experience is complete.

§ 680.840 What funds may be used for transitional jobs?

Proposed § 680.840 states that local areas may reserve up to 10 percent of their combined total of adult and dislocated worker allotments for transitional jobs and must be

provided along with comprehensive career services and supportive services.

§ 680.850 May funds provided to employers for work-based training be used to assist, promote, or deter union organizing?

Proposed § 680.850 clarifies that there is an explicit prohibition on the use of work-based training funds which includes OJT, customized training, incumbent worker training, transitional jobs or registered apprenticeship for assisting, promoting, or deterring union organizing activities.

8. Subpart G – Supportive Services

Introduction

This section defines the scope and purpose of supportive services and the requirements governing their disbursement. A key principle in WIOA is to provide local areas with the authority to make policy and administrative decisions and the flexibility to tailor the workforce system to the needs of the local community. To ensure maximum flexibility, the regulations provide local areas the discretion to provide the supportive services they deem appropriate subject to the limited conditions prescribed by WIOA. Local Boards must develop policies and procedures to ensure coordination with other entities to ensure non-duplication of resources and services and to establish limits on the amount and duration of such services. Local Boards are encouraged to develop policies and procedures that ensure that supportive services are WIOA- funded only when these services are not available through other agencies and that the services are necessary for the individual to participate in title I activities. Supportive services may be made available to anyone

participating in title I activities.

Needs-related payments are designed to provide a participant with resources for the purpose of enabling them to participate in training services. The Department recognizes that many individuals in need of training services may not have the resources available to participate

in the training. Needs-related payments can help individuals meet their non-training expenses and help them to complete training successfully. A participant must be enrolled in a training program in order to receive needs-related payments.

§ 680.900 What are supportive services for adults and dislocated workers?

Proposed § 680.900 explains that supportive services are services, such as transportation, child care, dependent care, housing, and needs-related payments, that are necessary to enable an individual to participate in career and training services. Referrals to supportive services are one of the career services that must be made available to adults and dislocated workers through the one-stop delivery system. The proposed section also provides that Local Boards, in consultation with the one-stop partners and other community service providers, must develop a policy on supportive services that ensures resource and service coordination in the local area. The policy must address procedures for referral to such services, including how such services will be funded when they are not otherwise available from other sources. When developing this policy, the Department encourages Local Boards to consider incorporating local legal aid services. Legal aid is able to reduce barriers to employment and establish employment eligibility such as by helping secure a driver's license, expunging criminal records, and addressing debts or credit reporting issues.

In the context of a coordinated one-stop delivery system envisioned by WIOA, the one-stop needs to take into consideration all of the available supportive service resources so that

participants may receive the best supportive services available and to ensure that funds are spent to maximize participants' opportunity to participate in career and training services.

§ 680.910 When may supportive services be provided to participants?

Proposed § 680.910 states that supportive services may only be provided to participants who are in career or training services, unable to obtain supportive services through other programs providing supportive services, and that they must be provided in a manner necessary to enable individuals to participate in career or training services. The proposed rule removes references to "core" and "intensive" services, terms now characterized as "career services" under WIOA.

§ 680.920 Are there limits on the amounts or duration of funds for supportive services?

Proposed § 680.920 provides that Local Boards may establish limits on providing supportive services or allow the one-stop operator to establish limits, including caps on the amount of funding and length of time for supportive services to be made available. The rule text makes no changes from WIA.

§ 680.930 What are needs-related payments?

Proposed § 680.930 defines needs-related payments as financial assistance to a participant for the purpose of enabling the individual to participate in training. Needs-related payments are a type of supportive service that provides direct financial payments to a participant, and unlike other supportive services, the participant must be enrolled in training to receive

needs-related payments. The rule text makes no substantive changes from WIA; it provides updated citations to WIOA.

§ 680.940 What are the eligibility requirements for adults to receive needs-related payments?

Proposed § 680.940 clarifies that for an adult to receive a needs-related payment he or she must be unemployed, not qualify for or have ceased to qualify for UC, and be enrolled in a training program.

§ 680.950 What are the eligibility requirements for dislocated workers to receive needs-related payments?

Proposed § 680.950 provides that dislocated workers may receive needs-related payments if they are unemployed, ceased to qualify for UC or trade readjustment allowance under Trade Adjustment Assistance (TAA), and be enrolled in training by certain deadlines. It makes one clarification from WIA in that it provides that the dislocated worker must be enrolled in training.

§ 680.960 May needs-related payments be paid while a participant is waiting to start training classes?

Proposed § 680.960 states that payments may be provided if the participant has been accepted into a program that will begin within 30 calendar days.

§ 680.970 How is the level of needs-related payments determined?

Proposed § 680.970(a) explains that the needs-related payment level for adults must be established by the Local Board. The Department recognizes the costs of different labor markets and

believes that payment levels are best set locally to ensure the needs-related payments meet their purpose of enabling participants to receive training services.

Proposed § 680.970(b) explains how needs-related payments for dislocated workers are calculated. If the participant is a dislocated worker and has established eligibility for UC, the needs-related payment must not exceed the higher of the weekly level of UC the participant receives or an amount equal to the poverty level for an equivalent time period. If the participant qualifies for dislocated worker services, but not for UC as a result of the qualifying layoff, the needs-related payment must not exceed the higher of the weekly level of UC the participant would receive if she or he had qualified, if the weekly benefit amount that the participant would have received can be determined, or an amount equal to the poverty level for an equivalent time

period. Local Boards must adopt policies to adjust the weekly payment level if there are changes in total family income.

D. Part 681 – Youth Activities Under Title I of the Workforce Innovation and Opportunity Act

1. Introduction

Under WIOA, Federal, State, and local partnerships that put the youths' interests first will help the nation's disconnected youth to succeed. The common performance measures across WIOA core programs, adult and youth programs under WIOA title I, and Adult Education and Vocational Rehabilitation programs under WIOA titles II and IV provide a mechanism to support youth service alignment. WIOA envisions the Department's youth programs, including Job Corps, YouthBuild, and the youth formula-funded program, coordinating to support systems alignment and service

delivery for youth. Local and State plans will articulate this vision of youth workforce investment activities and help ensure a long-term supply of skilled workers and leaders in local communities.

WIOA affirms the Department's commitment to providing high quality services for youth and young adults beginning with career exploration and guidance, continued support for educational attainment, opportunities for skills training in in-demand industries and occupations, and culminating with a good job along a career pathway or enrollment in post-secondary education. All of the Department's youth-serving programs continue to promote evidence-based strategies that also meet the highest levels of performance, accountability, and quality in preparing young people for the workforce. The Department's focus on performance and accountability is emphasized through the implementation of the new primary indicators of

performance for eligible youth across programs and through their use of the primary indicators for program management and decision-making.

WIOA maintains WIA's focus on OSY in Job Corps and YouthBuild, while greatly increasing the focus on OSY in the WIOA youth formula-funded program. The shift in policy to focus on those youth most in need is based on the current state of youth employment. With an estimated 6 million 16-24 year olds in our country not employed or in school, WIOA youth programs provide a continuum of services to help these young people navigate between the educational and workforce systems. The Department, working with its Education and Health and Human Services partners, plans to provide intensive technical assistance around meeting the needs of this population.

WIOA calls for customer-focused services based on the needs of the individual participant. This includes the creation of career pathways for youth in all title I youth programs, including a connection to career pathways as part of a youth's individual service strategy in the youth formula-

funded program. In addition, many services under title I youth programs are based on the individual needs of participants. WIOA also calls for this population to be intimately involved in the design and implementation of services so the youth voice is represented and their needs are being met.

This integrated vision also applies to the workforce system's other shared customer-employers. By repositioning youth as an asset to employers with a need for skilled workers, the value of employers engaging the youth workforce system and programs is enhanced. Employers are critical partners that provide meaningful growth opportunities for young people through work experiences that give them the opportunity to learn and apply skills in real-world setting and ultimately jobs that young people are ready to fill given the opportunity.

The Department recognizes that much of this alignment and integration is already happening in local areas and regions across the country. WIOA aims to build upon these existing efforts through an emphasis on system alignment, an increased focus on serving OSY and those most in need, an emphasis on the needs of individual participants, and the prioritization of connections with employers, especially through work experience opportunities. The Department recognizes that WIOA also includes major shifts in approach and is committed to working with the youth workforce investment system to partner in the implementation of these changes through guidance and technical assistance.

WIOA supersedes the youth formula-funded program under title I, subtitle B, chapter 2 Youth Workforce Investment Activities. It further aligns the WIOA youth program with the other ETA youth training programs, including YouthBuild and Job Corps, as well as with titles II and IV of WIOA by requiring common performance measures across all core programs.

WIOA includes a number of significant changes for the youth formula-funded program.

The biggest change under WIOA is the shift to focus resources primarily on OSY. WIOA increases the minimum percentage of funds required to be spent on OSY from 30 percent to 75 percent. This intentional shift refocuses the program to serve OSY during a time when large numbers of youth and young adults are out of school and not connected to the labor force. While the Department recognizes this transition to serve more OSY will take time to implement, it is critical that States and local areas begin to incorporate strategies for recruiting and serving more OSY.

These strategies must incorporate strong framework services which must include intake, objective assessments, and the development of individual service strategy, case management, supportive services, and follow-up services. They must also consider how to ensure that American Job Center staff have the requisite knowledge and sensitivity to the needs of OSY to effectively serve them. The Department plans to release subsequent guidance on these matters but also welcomes comments at this time on preferred approaches.

In addition, WIOA includes a major focus on providing youth with work experience opportunities. WIOA prioritizes work experiences with the requirement that local areas must spend a minimum of 20 percent of local area funds on work experience. Under WIOA, work experience becomes the most important of the program elements. WIOA also introduces five new program elements: financial literacy; entrepreneurial skills training; services that provide labor market and employment information about in-demand industry sectors or occupations available in the local areas; activities that help youth prepare for and transition to post-secondary education and training; and education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster.

WIOA enhances the youth program design through an increased emphasis on individual participant needs by adding new components to the objective assessment and individual service

strategy. WIOA incorporates career pathways as part of both the objective assessment and development of the individual service strategy. In addition, the individual service strategy must directly link to one or more of the performance indicators. The program design under WIOA also includes effective connections to employers, including small employers, in in-demand industry sectors and occupations.

2. Subpart A – Standing Youth Committees

§ 681.100 What is a standing youth committee?

This proposed section describes a standing youth committee. WIOA eliminates the requirement for Local Boards to establish a youth council; however, the Local Board may choose to establish, "a standing committee to provide information and to assist with planning, operational, and other issues relating to the provision of services to youth, which must include CBOs with a demonstrated record of success in serving eligible youth" (WIOA sec. 107(b)(4)(A)(ii)). The Department recognizes the difficulty under WIA in some local areas in maintaining the required youth council partnerships. The Department encourages Local Boards to consider establishing standing youth committees, taking advantage of the flexibility under WIOA to design standing youth committee membership to meet the local area's needs.

Additionally, the law further clarifies that an existing youth council may be designated as the youth standing committee if they are fulfilling the requirements of a standing committee which means that they have members of the Local Board who have the appropriate experience and expertise in youth educational and workforce development (WIOA sec. 107(b)(4)(C)). The Department encourages

Local Boards to designate high performing youth councils as standing youth committees if appropriate. Local Boards are responsible for the oversight of youth programs. Under WIA, youth councils were mandated to fulfill this function for the Board.

Local Boards now may choose to fulfill the oversight responsibility, or have the discretion to delegate this function to a standing youth committee. If Local Boards choose not to delegate this function to a standing youth committee, they are responsible for conducting oversight of youth workforce investment activities under WIOA sec. 129(c).

§ 681.110 Who is included on a standing youth committee?

This proposed section describes the members of a standing youth committee if the Local Board chooses to establish such a committee based on WIOA secs. 107(b)(4)(A)(ii) and 129(c)(3)(C). The members must include a member of the Local Board, who must chair the committee, members of CBOs with a demonstrated record of success in serving eligible youth

and other individuals with appropriate expertise and experience who are not members of the Local Board. The committee may also include parents, participants, and youth. A Local Board may designate an existing entity such as an effective youth council as the standing youth committee if its membership meets the WIOA membership requirements.

§ 681.120 What does a standing youth committee do?

This proposed section describes the duties of a standing youth committee if the Local Board chooses to establish such a committee based on WIOA secs.107(b)(4)(A)(ii) and 129(c)(3)(C). The standing committee's main function is to inform and assist the Local Board in developing and

overseeing a comprehensive youth program. The details of its responsibilities are assigned by the Local Board.

3. Subpart B – Eligibility for Youth Services

§ 681.200 Who is eligible for youth services?

This proposed section based on WIOA sec. 3(18) describes eligibility for the WIOA title I youth formula-funded program which includes two groups: in-school youth (ISY) and OSY and establishes specific criteria for each group. The eligible WIOA title I youth population represents youth who face challenges and barriers to success in the labor market.

§ 681.210 Who is an "out-of-school youth"?

This proposed section describes how one meets the eligibility for an OSY for purposes of the title I WIOA youth program. OSY youth must not attend any school, be between the ages of 16 and 24 at time of enrollment, and meet one or more of a list of eight criteria. With one exception, the WIOA criteria are generally the same as those under WIA. The section clarifies that age is based on time of enrollment and as long as the individual meets the age eligibility at time of enrollment they can continue to receive WIOA youth services beyond the age of 24.

Unlike under WIA or under the definition of an ISY, low income is not a requirement to meet eligibility for most categories of OSY under WIOA. However, low income is now a part of the criteria for youth who need additional assistance to enter or complete an educational program or to

secure or hold employment. Also, WIOA has made youth with a disability a separate eligibility criterion.

In addition, WIOA includes a new criterion: a youth who is within the age of compulsory school attendance, but has not attended school for at least the most recent school year calendar quarter. Because school districts differ in what they use for school year quarters, the time period of a school year quarter is based on how a local school district defines its school year quarters. WIOA lists this criterion as the second on the list of eight that satisfy the third of the three primary requirements.

§ 681.220 Who is an "in-school youth"?

This proposed section describes how one meets the eligibility for an ISY for purposes of the WIOA title I youth program. ISY youth must be attending school, including secondary or post-secondary school, be between the ages of 14 and 21 at time of enrollment, be low-income, and meet one or more of a list of seven criteria. These are essentially the same criteria as under WIA but the disability criterion has been separated from the "needs additional assistance" criterion. The section clarifies that age is based on time of enrollment and as long as the individual meets the age eligibility at time of enrollment they can continue to receive WIOA youth services beyond the age of 21. WIOA includes a youth as low-income if he or she receives or is eligible to receive a free or reduced price lunch under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.).

§ 681.230 What does "school" refer to in the "not attending or attending any school" in the out-of-school and in-school definitions?

The term school refers to both secondary and post-secondary school as defined by the applicable State law for secondary and post-secondary institutions. This proposed section provides

that for purposes of title I of WIOA, the Department does not consider providers of adult education under title II of WIOA, YouthBuild programs, or Job Corps programs as schools. Therefore, if the only "school" the youth attends is adult education provided under title II of WIOA, YouthBuild, or Job Corps, the Department will consider the individual an OSY youth for purposes of title I of WIOA youth program eligibility.

WIOA emphasizes the importance of coordination among Federally-funded employment and training programs, including those authorized under titles I and II. Many disconnected youth age 16 to 24 meet eligibility requirements for both WIOA title I youth activities and WIOA title II adult education. Co-enrollment between these two programs can be very beneficial to disconnected youth as they can receive work experience and occupational skills through title I funding and literacy skills through title II funding. Because the eligibility for title II is similar to that for an OSY under title I, an individual who is not enrolled or required to be enrolled in secondary school under State law, it is consistent to consider such youth already enrolled in title II as an OSY for purposes of title I WIOA youth eligibility.

§ 681.240 When do local youth programs verify dropout status, particularly for youth attending alternative schools?

This proposed section provides that dropout status is determined at the time of enrollment for eligibility as an OSY and that once a youth is enrolled as an OSY, that status continues, for purposes of the 75 percent OSY enrollment requirement, for the duration of the youth's

enrollment, even if the youth later returns to a school. Because WIOA does not define the term alternative school, States must develop a definition. The Department advises States to define alternative school consistent with their State education agency alternative school definition. As of September 2014, 43 States and the District of Columbia have formal definitions of alternative

education. The intent of WIOA is to serve more OSY who are disconnected from school and work, while continuing to develop strategies and provide services to ISY in collaboration with community partners.

§ 681.250 Who does the low-income eligibility requirement apply to?

This proposed section discusses the low-income eligibility criteria for OSY and ISY. For OSY**,** only those youth who are the recipient of a secondary school diploma or its recognized equivalent and are either basic skills deficient or an English language learner and youth who require additional assistance to enter or complete an educational program or to secure or hold employment must be low-income. For OSY who are subject to the justice system, homeless, pregnant or parenting, or have a disability, income eligibility documentation is not required by statute. All ISY must be low-income. Under WIOA, there are circumstances when local areas will find documenting low income for youth formula program eligibility less burdensome than it was under the WIA youth program. For example, for ISY a local program can use eligibility for free or reduced price lunch as low-income documentation. For all youth, those living in a high- poverty area are considered low-income. The section also sets out the exception to the low- income requirement that up to 5 percent of youth who meet all the other eligibility requirements need not be low-income. The 5 percent is calculated based on all youth served in the WIOA local youth program in a given PY.

§ 681.260 How does the Department define "high poverty area" for the purposes of the special rule for low-income youth in Workforce Innovation and Opportunity Act?

WIOA contains a new provision that allows for youth living in a high-poverty area to automatically meet the low-income criterion that is one of the eligibility criteria for ISY and for some OSY. In order to maintain consistency across the country, the Department proposes that a high-

poverty area be defined as a Census tract; a set of contiguous Census tracts; Indian Reservation, tribal land, or Native Alaskan Village; or a county that has a poverty rate of at least 30 percent as set every 5 years using American Community Survey 5-Year data. While there is no standard definition for the term "high-poverty area" in Federal programs, the Census Bureau uses two similar concepts. One is "poverty area," that is an area with a poverty rate of at least 20 percent and the other is "area with concentrated poverty," that is an area with a poverty rate of at least 40 percent. The term high-poverty area implies an area that has more poverty than a "poverty area" but not as much poverty as an "area with concentrated poverty." In addition, current Department competitive grant programs for ex-offenders define high poverty areas as communities with poverty rates of at least 30 percent. The Department is seeking comments on whether the poverty thresholds the Department is proposing are the most appropriate levels for youth living in a high poverty area.

§ 681.270 May a local program use eligibility for free or reduced price lunches under the National School Lunch Program as a substitute for the income eligibility criteria under title I of the Workforce Innovation and Opportunity Act?

This proposed section describes a change from WIA in which a local program can use eligibility for free or reduced price lunch under the Richard B. Russell National School Lunch Act as one of the factors to determine whether a participant meets the low-income criteria for eligibility for the WIOA youth program.

§ 681.280 Is a youth with a disability eligible for youth services under the Act if their family income exceeds the income eligibility criteria?

This proposed section reiterates the WIOA provision that, for an individual with a disability, income level for eligibility purposes is based on his/her own income rather than his/her family's income.

§ 681.290 How does the Department define the "basic skills deficient" criterion in this part?

This proposed section reiterates the basic skills deficient criterion that is part of the eligibility criteria for both OSY and ISY, for purposes of title I of WIOA. For the second part of the definition, which reads "a youth who is unable to compute or solve problems, or read, write, or speak English at a level necessary to function on the job, in the individual's family, or in society," the State and/or Local Board must further define how the State or Local Board will determine if a youth is unable to demonstrate these skills well enough to function on the job, in their family, or in society as part of its respective State or local plan. The section also provides that local programs must use valid and reliable assessment instruments and provide reasonable accommodations to youth with disabilities in the assessment process in making this determination.

§ 681.300 How does the Department define the "requires additional assistance to complete an educational program, or to secure and hold employment" criterion in this part?

This proposed section allows States and/or local areas to define the "requires additional assistance …" criterion that is part of the OSY and ISY eligibility. It clarifies that if this criterion is not defined at the State level and a local area uses this criterion in their OSY or ISY eligibility, the local area must define this criterion in their local plan.

§ 681.310 Must youth participants enroll to participate in the youth program?

This proposed section clarifies that there is no self-service concept for the WIOA youth program and every individual receiving services under WIOA youth must meet ISY or OSY eligibility criteria and formally enroll in the program. It defines enrollment as the collection of

information to support an eligibility determination and participation in any one of the 14 program elements. Under WIA the Department received many questions about the point in time that a youth became enrolled in the program. The Department hopes the proposed addition of connecting enrollment to receipt of a program element clarifies the moment at which enrollment occurs. The reference to EO data in the corresponding section under WIA was dropped because all rules related to data collection are covered in § 677 on performance management.

4. Subpart C – Youth Program Design, Elements, and Parameters

§ 681.400 What is the process used to select eligible youth providers?

WIA regulations did not address the process for identifying and selecting eligible youth providers required in WIA sec. 123. The Department has received numerous inquiries asking for clarification on the competitive selection of youth providers and which services must be provided by entities identified in accordance with WIA sec. 123. This proposed regulation clarifies which youth activities may be conducted by the local grant recipient and which services must be provided by entities identified in accordance with WIOA sec. 123. Consistent with

§ 664.405(a)(4), the competitive selection requirement in WIOA sec. 123 does not apply to framework services if the grant recipient/fiscal agent provides these services. The Department allows this because in some cases the grant recipient/fiscal agent may be best positioned to

provide such services. For example, the grant recipient/fiscal agent that provides framework services can ensure continuity of WIOA youth programming as youth service providers change.

§ 681.410 Does the requirement that a State and local area expend at least 75 percent of youth

funds to provide services to out-of-school youth apply to all youth funds?

This proposed section describes the new minimum expenditure requirement under WIOA that States and local areas must expend a minimum of 75 percent of youth funds on OSY. Under WIA, local areas were required to spend at least 30 percent of funds to assist eligible OSY. This represents a significant shift in the focus of the WIOA youth program and the Department recognizes such a shift will require additional technical assistance and guidance, including assistance to other youth-serving programs. This section also describes that the minimum 75 percent OSY expenditure applies to both local area funds and statewide youth activities funds reserved by the Governor. However, only those statewide funds spent on direct services to youth are subject to the OSY expenditure requirement. Funds spent on statewide youth activities that do not provide direct services to youth, such as most of the required statewide youth activities listed in WIOA sec. 129(b)(1), are not subject to the OSY expenditure requirement. In addition, local area administrative costs are not subject to the 75 percent OSY minimum expenditure. The OSY expenditure rate is calculated for statewide funds after subtracting out funds that are not spent on direct services to youth. The OSY expenditure rate is calculated for local area funds after subtracting the funds spent on administrative costs. For example, if a local area receives $1 million and spends $100,000 on administrative costs, the remaining $900,000 is subject to the OSY expenditure rate. In this example, the local area would be required to spend at least

$675,000 (75 percent) of the $900,000 on OSY.

This section also clarifies the guidelines by which a State that receives a minimum allotment under WIOA sec. 127(b)(1) or under WIOA sec. 132(b)(1) may request an exception to decrease the expenditure percentage to not less than 50 percent. The OSY exception language at WIOA sec. 129(a)(4)(B) references sec. 127(b)(1)(C)(iv) and sec. 132(b)(1)(B)(iv), which includes States that receive 90 percent of the allotment percentage for the preceding year under the youth or adult

formula programs (WIOA secs. 127(b)(1)(C)(iv)(I) and 132(b)(1)(B)(iv)(I)) and States that receive the small State minimum allotment under either program (WIOA secs.

127(b)(1)(C)(iv)(II) and 132(b)(1)(B)(iv)(II)). Under WIA this exception was only available to States receiving the small State minimum allotment, and no State submitted a request for the exception. The Department proposes to limit the approval of requests described in WIOA sec. 129(a)(4)(B) to only those States that receive the small State minimum allotment under WIOA secs. 127(b)(1)(C)(iv)(II) and 132(b)(1)(B)(iv)(II). Thus, requests to decrease the percentage of funds to be used to provide activities to OSY will not be granted to States based on their having received 90 percent of the allotment percentage for the preceding year. When the Secretary receives such a request from a State based on having received 90 percent of the allotment percentage for the preceding year, the request will be denied without the Secretary exercising further discretion.

While the list of States receiving the small State minimum allotment is generally consistent, there is an almost complete yearly turnover of the States receiving the 90 percent minimum allotment. Given this continuous turnover, approving a request from these States for an exception to the 75 percent expenditure requirement would cause significant disruption in the operation of local youth programs. In particular, States and local areas would be unable to develop and implement long-term service delivery strategies and plans and would be unable to

establish the appropriate infrastructure necessary to meet the 75 percent expenditure requirement. These disruptions would adversely affect the quality of services that could be delivered to youth program participants, particularly OSY, thereby undermining one of the most significant changes in priorities from WIA to WIOA. Given the disruption and harm that would result from approving requests from States receiving the 90 percent minimum allotment for an exception to the 75 percent expenditure requirement, the Department proposes to limit the approval of this exception to States receiving the small State minimum allotment.

Even in those States receiving a small State minimum allotment, it will be very difficult for a State to make an affirmative determination that, after analysis of the local area's youth population, the local area "will not be able" to use 75 percent of its funds for OSY, which is a required element of any request.

§ 681.420 How must Local Boards design Workforce Innovation and Opportunity Act youth programs?

This proposed section describes the framework for the WIOA youth program design.

The framework includes an objective assessment; an individual service strategy, which programs must update as needed to ensure progression through the program; and general case management; and follow-up services that lead toward successful outcomes for WIOA youth program participants. WIOA makes two significant changes to WIA's requirements for service strategies. One is that the service strategy must be linked to one or more of the indicators of performance in WIOA sec. 116(b)(2)(A)(ii). The other is that the service strategy must identify career pathways that include appropriate education and employment goals. For both objective assessment and individual service strategy, programs may use recently completed assessments or

service strategies conducted by another education or training program rather than create new assessments or service strategies if they determine it is appropriate to do so.

This proposed section also describes the requirement that Local Boards must link to youth-serving agencies and adds local human services agencies to the list that WIA required. It provides that Local Boards must provide eligible youth with information about the full array of applicable or appropriate services available through the Local Board or other eligible providers, or one-stop partners. It also provides that Local Boards must refer eligible youth to appropriate services that

have the capacity to serve them on a concurrent or sequential basis. The proposed section also provides that eligible providers must refer youth who either do not meet the enrollment requirements for that program or cannot be served by that program for further assessment, if necessary, or to appropriate programs to meet the skills and training needs of the participant. Local Boards must also involve specific members of the community, including parents and youth participants, in designing and implementing the WIOA youth program.

A new provision in WIOA allows the Local Board to use up to 10 percent of their funds to implement pay-for-performance contracts for the program elements described in § 681.460. Pay-for-performance contracts are further described in § 683.500.

§ 681.430 May youth participate in both the Workforce Innovation and Opportunity Act youth and adult programs concurrently, and how do local program operators track concurrent enrollment in the Workforce Innovation and Opportunity Act youth and adult programs?

This proposed section provides that youth may participate in both the WIOA youth program and the adult program at the same time if they are eligible for both and it is appropriate. If such concurrent enrollment occurs, local programs must track expenditures separately by program. This section eliminated the reference, included in the WIA regulations, to concurrent

enrollment in the dislocated worker program because any youth meeting eligibility for the dislocated worker program would have already successfully attained a job and would most likely be more appropriately served under the dislocated worker program. The section also provides that youth who are eligible under both programs may enroll concurrently in WIOA title I and II programs.

§ 681.440 How does a local youth program determine if an 18 to 24 year old is enrolled in the Workforce Innovation and Opportunity Act youth program or Workforce Innovation and Opportunity Act adult program?

Individuals aged 18 to 24 are eligible for the WIOA adult and youth programs and local areas must determine whether to serve such individuals in the youth program, adult program, or both. This proposed section provides that a local youth program must determine whether to enroll an 18 to 24 year old in the youth program or adult program based on the individual's career readiness as determined through an objective assessment.

§ 681.450 For how long must a local Workforce Innovation and Opportunity Act youth program serve a participant?

The Department proposes this new section because the Department's monitoring of local areas commonly found WIA youth were exited before successfully completing the program due to artificial time constraints or the ending of youth service provider contracts. In order to ensure that youth are not prematurely exited from the WIOA youth program, the Department proposes that youth programs serve participants for the amount of time necessary to ensure they are successfully prepared to enter post-secondary education and/or unsubsidized employment.

While there is no minimum or maximum time a youth can participate in the WIOA youth

program, programs must link program participation to a participant's individual service strategy and not the timing of youth service provider contracts or PYs.

§ 681.460 What services must local programs offer to youth participants?

This proposed section lists the 14 program elements, including 5 new youth program elements in WIOA sec. 129(c)(2) that were not included under WIA. These new elements are

(1) education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster; (2) financial literacy education; (3)

entrepreneurial skills training; (4) services that provide labor market and employment information about in-demand industry sectors or occupations available in the local area, such as career awareness, career counseling, and career exploration services; and (5) activities that help youth prepare for and transition to post-secondary education and training. In addition, WIOA has revised some of the WIA program elements. For example, the element on tutoring, study skills training, instruction leading to the completion of secondary school, including dropout prevention strategies, has been revised to provide that the dropout prevention (and recovery) strategies must be evidence-based and to make clear that the completion of secondary school can be accomplished by attainment of a secondary school diploma or its recognized equivalent, including a certificate of attendance or similar document for individuals with disabilities. This change is consistent with WIOA's emphasis on evidence-based programs. WIOA also combines the two WIA elements of summer youth employment programs and work experiences so that summer youth employment programs become one item in a list of work experiences and adds pre-apprenticeship programs to the list of work experiences. Finally, WIOA expands the description of the occupational skill training element to provide for priority consideration for training programs that lead to recognized post-secondary credentials that are

aligned with in-demand industry sectors or occupations if the programs meet WIOA's quality criteria. This change is consistent with WIOA's increased emphasis on credential attainment. The section clarifies that while local WIOA youth programs must make all 14 program elements available to WIOA youth participants, local programs have the discretion to determine which elements to provide to a participant based on the participant's assessment and individual service strategy.

§ 681.470 Does the Department require local programs to use Workforce Innovation and Opportunity Act funds for each of the 14 program elements?

This proposed section clarifies that local WIOA youth programs must make all 14 program elements available to youth participants, but not all services must be funded with WIOA youth funds. Local programs may leverage partner resources to provide program elements that are available in the local area. If a local program does not fund an activity with WIOA title I youth funds, the local area must have an agreement in place with the partner to offer the program element and ensure that the activity is closely connected and coordinated with the WIOA youth program if enrolled youth participate in the program element. By closely connected and coordinated, the Department means that case managers must contact and monitor the provider of the non-WIOA-funded activity to ensure the activity is of high quality and beneficial to the youth participant.

§ 681.480 What is a pre-apprenticeship program?

This proposed section defines a pre-apprenticeship program, which is one of the types of work experiences listed under WIOA sec. 129(c)(2)(C). The reference to pre-apprenticeship programs is new in WIOA. The definition is based on TEN No. 13-12 that defined a quality pre-apprenticeship program. Local youth programs must coordinate pre-apprenticeship programs to the maximum extent feasible with registered apprenticeship programs, which are defined in WIOA sec. 171(b)(10), and require at least one documented partnership with a registered apprenticeship program. Quality pre-apprenticeship programs play a valuable role in preparing entrants for registered apprenticeship and contribute to the development of a diverse and skilled workforce. Pre-apprenticeship programs can be adapted to meet the needs of participants, the various employers and sponsors they serve, and the specific employment opportunities available in a local labor market. Pre-apprenticeship training programs have successfully demonstrated that obstacles such as low math skills, poor work habits, lack of access to transportation, and lack of knowledge of sector

opportunities can be overcome when coordinated training and support is provided to workers.

§ 681.490 What is adult mentoring?

This proposed section describes the adult mentoring program element. It provides that mentoring must last at least 12 months and defines the mentoring relationship. It clarifies that mentoring must be provided by an adult other than the WIOA youth participant's assigned case manager since mentoring is above and beyond typical case management services. Mentoring may take many forms, but at a minimum must include a youth participant matched with an individual adult mentor other than the participant's case manager. Mentoring services may include group mentoring, mentoring via electronic means, and other forms as long as it also includes individual mentoring from an assigned mentor. Local programs should use evidence- based models of mentoring to design their programs. The Department recommends that programs provide rigorous screening, training, and match support for mentors, and frequent contact with youth and parents as the match progresses.

§ 681.500 What is financial literacy education?

This proposed section describes the financial literacy program element, new under WIOA. Financial literacy is described in the allowable statewide youth activities in WIOA sec. 129(b)(2)(D) and the proposed section reiterates what was stated in the allowable statewide activities section of supporting financial literacy. The Department has added an element on informing participants about identity theft to the list in WIOA sec. 129(b)(2)(D). The Department recognizes the importance of equipping workers with the knowledge and skills they need to achieve long-term financial stability and solicits comments on how best to achieve this goal.

§ 681.510 What is comprehensive guidance and counseling?

This proposed section describes the types of guidance and counseling services that fall under the program element comprehensive guidance and counseling, which includes referral to services provided by partner programs, as appropriate. When referring participants to necessary counseling that cannot be provided by the local youth program or its service providers, the local youth program must coordinate with the organization it refers to in order to ensure continuity of service.

§ 681.520 What are leadership development opportunities?

This proposed section includes all of the examples of leadership development opportunities included in WIA regulations and adds two new examples of appropriate leadership development opportunities that a local area may consider when providing leadership development opportunities. One new example is civic engagement activities; the other is activities which put the youth in a leadership role.

§ 681.530 What are positive social and civic behaviors?

While WIA included positive social behaviors as part of the description of leadership development opportunities, WIOA adds "civic behaviors" to the description of the leadership development program element. This proposed section expands the examples of positive social behaviors to include keeping informed of community affairs and current events.

§ 681.540 What is occupational skills training?

This proposed section provides a definition for the occupational skills training program element. It was not previously defined under WIA. WIOA sec. 129(c)(2)(D) further sharpens the focus on occupational skills training by requiring local areas to give priority consideration for training programs that lead to recognized post-secondary credentials that align with in-demand industries or occupations in the local area. The Department interprets this requirement to mean that when seeking occupational skills training for a participant, local areas must first seek training programs that lead to recognized post-secondary credentials in in-demand industries or occupations and only if none are available should they refer a participant to a training program that does not lead to a recognized post-secondary credential. The Department has further defined this priority by requiring that such training be outcome oriented and focused on an occupational goal in a participant's individual service strategy and that it be of sufficient duration to impart the skills needed to meet that occupational goal. In all cases, local areas must ensure that the training program meets the quality standards in WIOA sec. 123.

§ 681.550 Are Individual Training Accounts permitted for youth participants?

Prior WIA regulations provide that ITAs are not an authorized use of youth funds.

However, more than 30 States received waivers under WIA to use ITAs for older and OSY to: 1) expand training options; 2) increase program flexibility; 3) enhance customer choice; and 4)

reduce tracking, reporting and paperwork that comes with dual enrollment. ITAs have therefore become a critical component in WIA to provide training services to older and OSY. WIOA is silent

on the use of ITAs for youth participants.

This proposed section allows ITAs for older OSY aged 18 to 24. This change will enhance individual participant choice in their education and training plans and provide flexibility to service providers. ITAs also reduce the burden for local areas by eliminating duplicative paperwork needed for enrolling older youth in both youth and adult formula programs. ITAs will benefit disconnected youth and reinforce WIOA's emphasis on increasing access to and opportunities for workforce investment services for this population. To the extent possible, local programs must ensure that youth participants are involved in the selection of their educational and training activities. The Department welcomes comments on the proposed allowance of ITAs for older OSY.

§ 681.560 What is entrepreneurial skills training and how is it taught?

This proposed section defines entrepreneurial skills training, a new program element under WIOA. While entrepreneurial skills training was previously listed as an example of a work experience in WIA, under WIOA it is a separate program element. The Department has also provided a list of possible methods of teaching youth entrepreneurial skills training. The Department is specifically seeking comments from stakeholders around developmentally appropriate types and methods of teaching entrepreneurial skills.

§ 681.570 What are supportive services for youth?

This proposed section lists examples of supportive services for youth and includes two additional examples which were not listed in WIA youth regulations. Needs-related payments were listed as an example of an adult supportive service under WIA and also can be critical to

youth living on their own who participate in a youth program. WIOA lists needs-related payments as a supportive service at sec. 3(59). In addition, the Department lists assistance with educational testing and accommodations as examples because they are prime example of services that can be necessary to enable an individual to participate in activities authorized by WIOA.

For example, assistance with educational testing can provide OSY with the opportunity to take high school equivalency tests, as well as other exams for occupational certifications and credentials, while accommodations may be necessary for youth with disabilities to participate in certain assessments and to have equal access and opportunity to participate in a variety of work- based learning activities.

§ 681.580 What are follow-up services for youth?

This proposed section discusses the importance of follow-up services and lists examples of follow-up services for youth, which WIOA requires be provided for a minimum of 12 months. It clarifies that follow-up services may be different for each individual based on his or her individual needs. It also clarifies that follow-up services are more than a contact attempted or made to gather information for reporting purposes because follow-up services provide the necessary support to ensure the success of youth post-program. Therefore, to meet follow-up requirements, programs must do more than just make an attempt to contact to gather reporting information. The Department seeks comments on whether this section includes reasonable requirements for follow-up services.

§ 681.590 What is the work experience priority?

The proposed section discusses the 20 percent minimum expenditure requirement on the work experience program element in WIOA sec. 129(c)(4). Work experience is a critical WIOA

youth program element, arguably the most important program element as signaled by the minimum expenditure requirement. Work experience helps youth understand proper workplace behavior and what is necessary in order to attain and retain employment. Work experience can serve as a stepping stone to unsubsidized employment and is an important step in the process of developing a career pathway for youth. Research shows work experience is correlated with higher high school graduation rates and success in the labor market. This is particularly important for youth with disabilities.

§ 681.600 What are work experiences?

The proposed section defines the work experience program element using language similar to the corresponding WIA regulation and includes the four work experience categories listed in WIOA sec. 129(c)(2)(C). In addition, the section eliminates the language under the corresponding WIA rule that OJT is not an appropriate work experience activity for youth.

WIOA sec. 129(c)(2)(C)(4) explicitly enumerates OJT opportunities as one type of work experience.

Work experiences are designed to enable youth to gain exposure to the working world and its requirements. Work experiences should help youth acquire the personal attributes, knowledge, and skills needed to obtain a job and advance in employment.

§ 681.610 How will local Workforce Innovation and Opportunity Act youth programs track the work experience priority?

This proposed section discusses the new requirement under WIOA that a local youth program must use not less than 20 percent of the funds allocated to the local area to provide youth participants, both ISY and OSY, with paid and unpaid work experiences. In order to ensure that

local WIOA youth programs meet this requirement, the Department proposes that local WIOA youth programs track program funds spent on paid and unpaid work experiences

and report such expenditures as part of the local WIOA youth financial reporting. Program expenditures on the work experience program element include wages as well as staffing costs for the development and management of work experiences. Like the 75 percent OSY expenditure requirement, local area administrative costs are not subject to the 20 percent minimum work experience expenditure requirement. The work experience expenditure rate is calculated for local area funds after subtracting out funds spent on administrative costs and is calculated based on remaining total local area youth funds rather than calculated separately for in-school and OSY.

§ 681.620 Does the Workforce Innovation and Opportunity Act require Local Boards to offer summer employment opportunities in the local youth program?

Under WIOA sec. 129(c)(2)(C), summer employment opportunities are one of four suggested components of the paid and unpaid work experiences program element. While local WIOA youth programs must provide paid and unpaid work experiences, they may take the form of a number of activities including: summer employment opportunities and employment opportunities available throughout the year, pre-apprenticeship programs, internships and job shadowing, and OJT. While summer employment opportunities are an allowable activity and a type of work experience that counts toward the work experience priority (which requires a minimum of 20 percent of funds allocated to a local area are spent on work experience) they are not a required program element as they previously were under WIA.

§ 681.630 How are summer employment opportunities administered?

Local areas must adhere to the provisions outlined in WIOA sec. 123 for selecting service

providers when administering summer employment opportunities. This proposed section discusses that WIOA requires local areas to identify youth providers of youth workforce

investment activities, including work experiences such as summer employment opportunities, by awarding grants or contracts on a competitive basis. As provided in WIOA sec. 123, if there is an insufficient number of eligible providers of youth workforce investment activities, Local Boards may award grants or contracts on a sole source basis. This section also clarifies that the summer employment administrator does not need to select the employers who are providing the employment opportunities through a competitive process.

§ 681.640 What does education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster mean?

This proposed section describes the new program element at WIOA sec. 129(c)(2)(E): "education offered concurrently and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster." The new program element requires integrated education and training to occur concurrently and contextually with workforce preparation activities and workforce training for a specific occupation or occupational cluster for the purpose of educational and career advancement. Youth participants will not be required to master basic academic skills before moving on to learning career-specific technical skills. This approach aligns with recent research which found students using an integrated education and training model had better rates of program completion and persistence than a comparison group (Jenkins 2009).

§ 681.650 Does the Department allow incentive payments for youth participants?

This proposed section clarifies that incentives under the WIOA youth program are permitted. The Department has included the reference to 2 CFR 200 to emphasize that while incentive payments

are allowable under WIOA, the incentives must be in compliance with the requirements in 2 CFR part 200. This is not a change; under WIA, incentives must have

followed the Uniform Administrative Requirements at 29 CFR parts 95 and 97 and the cost principles at 2 CFR parts 220, 225, and 230. The Uniform Administrative Requirements were recently consolidated into 2 CFR part 200. For example, under 2 CFR part 200, Federal funds may not be spent on entertainment costs. Therefore, incentives may not include entertainment, such as movie or sporting event tickets or gift cards to movie theaters or other venues whose sole purpose is entertainment. Additionally, under 2 CFR part 200, there are requirements related to internal controls to safeguard cash which also apply to safeguarding of gift cards, which are essentially cash.

§ 681.660 How can parents, youth, and other members of the community get involved in the design and implementation of local youth programs?

This proposed section discusses the requirement in WIOA sec. 129(c)(3)(C) for the involvement of parents, participants, and community members in the design and implementation of the WIOA youth program and provides examples of the type of involvement that would be beneficial. The Department has also included in this proposed section the requirement in WIOA sec. 129(c)(8) that Local Boards must also make opportunities available to successful participants to volunteer to help participants as mentors, tutors, or in other activities.

5. Subpart D – One-Stop Services to Youth

§ 681.700 What is the connection between the youth program and the one-stop service delivery system?

This proposed section reiterates the connections between the youth program and the one-

stop system that were provided in the WIA regulations and includes additional examples of such connections including collocating WIOA youth program staff at one-stop centers and/or equipping one-stop centers and staff with the information necessary to advise youth on

programming to best fit their needs. The intent behind this section is to encourage staff working with youth under titles I, II, and IV of WIOA to coordinate better services for youth. This could include youth-focused one-stop centers in locations where youth tend to gather and making one- stops more accessible to youth.

§ 681.710 Do Local Boards have the flexibility to offer services to area youth who are not eligible under the youth program through the one-stop centers?

Consistent with WIA, this proposed section clarifies that Local Boards may provide services to youth through one-stop career centers even if the youth are not eligible for the WIOA youth program.

E. Part 682 – Statewide Activities Under Title I of the Workforce Innovation and Opportunity Act

1. Introduction

WIOA provides a reservation of funds for employment and training activities to be undertaken on a statewide basis. These activities are undertaken by the States, rather than by Local Boards. WIOA requires States to undertake certain statewide activities, but authorizes States to undertake a much wider range of activities. These required and allowable activities are addressed by this part of the proposed regulations. WIOA designates the percentage of funds that may be devoted to these activities from annual allotments to the States—up to 15 percent must be reserved from

youth, adult, and dislocated worker funding streams, and up to an additional 25 percent of dislocated worker funds must be reserved for statewide rapid response activities.

The up to 15 percent funds from the three funding streams may be expended on employment and training activities without regard to the source of the funding. For example,

funds reserved from the adult funding stream may be used to carry out statewide youth activities and vice versa. These funds must be used for certain specified activities, such as for State evaluations and for provision of data for Federal evaluations and research. If funds permit, States have authority to provide a variety of other activities. State set-aside funds allow States to continually improve their comprehensive workforce programs, ensure a national system that meets the needs of job seekers, workers and employers, and contribute to building a body of evidence to improve the effectiveness of services under WIOA.

2. Subpart A – General Description

This subpart describes what is encompassed by the term "statewide employment and training activities." It explains that States have both required and allowable activities to be undertaken on a statewide basis for adults, dislocated workers and youth. States have significant flexibility in the development of policies and strategies for the use of their statewide funds.

§ 682.100 What are the statewide employment and training activities under title I of the Workforce Innovation and Opportunity Act?

Proposed § 682.100 provides that there are both required and allowable statewide employment and training activities. States may use up to 15 percent of adult, youth and dislocated worker funds for statewide activities relating to youth, adult, dislocated workers. The States are

encouraged to develop policies and strategies for utilizing these funds, and must include descriptions of these activities in their State Plan.

§ 682.110 How are statewide employment and training activities funded?

Proposed § 682.110 does not change how statewide employment and training activities from how such activities were funded under WIA. The Governor has authority to use up to 15 percent of the adult, dislocated worker, and youth funds allocated to the State for statewide activities. The regulation provides that the adult, dislocated worker and youth 15 percent funds may be combined for use on required or allowed statewide activities regardless of the funding source.

3. Subpart B – Required and Allowable Statewide Employment and Training Activities

This subpart first discusses required statewide activities. WIOA continues the activities that were required under WIA, but adds several additional required activities, such as assistance to State entities and agencies described in the State Plan, alignment of data systems, regional planning, implementation of industry or sector partnerships, and cooperation in providing data for Federal evaluation and research projects. Required statewide activities under WIA and continued under WIOA include: outreach to businesses, dissemination of information on the performance and cost of attendance for programs offered by ETPs, and conducting evaluations.

This subpart also discusses allowable statewide activities. The Department provides States

with a significant amount of flexibility in how these funds may be used for statewide activities. States can test and develop promising strategies. This regulation is not designed to be an exhaustive list, but more illustrative of the types of allowable statewide activities that may be provided with these funds.

§ 682.200 What are required statewide employment and training activities?

Proposed § 682.200(a) explains that rapid response activities are a required statewide employment and training activity, as described in § 682.310.

Proposed § 682.200(b) explains the different types of information States are required to disseminate to the workforce system, including ETPLs, providers of work-based training providers, business partnership and outreach information, promising service delivery strategies,

performance information about training providers, eligible providers of youth activities, and information about physical and programmatic accessibility for individuals with disabilities.

Proposed § 682.200(c) states that the information listed in § 682.200(b) be made widely available. It explains that this may be achieved by various means, including posting information on State Web sites, physical and electronic handouts for dissemination to one-stop centers, and other appropriate means of sharing information.

Proposed § 682.200(d) explains that under WIOA sec. 134(a)(2)(B)(vi), States are required to use the 15 percent set aside to conduct evaluations in accordance with WIOA sec. 116(e) whose requirements are implemented in § 682.220.

Proposed § 682.200(e) requires States to provide technical assistance to local areas in carrying out activities described in the State Plan.

Proposed § 682.200(f) requires States to assist local areas, one-stop operators, and eligibile providers in providing opportunities for individuals with barriers to employment to enter in-demend industry sectors, and developing exemplary program activities.

Proposed § 682.200(g) and (h) require States to assit local areas carry out the regional planning and service delivery efforts, and provide local areas information on and support for the effective development, convening, and implementation of industry and sector partnerships.

Proposed § 682.200(i) requires the States to provide technical assistance to local areas that fail to meet their performance goals.

Proposed § 682.200(j) requires the State to carry out monitoring and oversight activities of the programs providing services to youth, adults and dislocated workers in WIOA. Under this authority, States may conduct reviews that compare services provided to male and female youth.

Proposed § 682.200(k) clarifies that States may provide additional assistance to local areas that have high concentrations of eligible youth to ensure a transition to education or unsubsidized employment.

Proposed § 682.200(l) requires States to operate a fiscal and management accountability system. This system is vital to ensure high levels in integrity of managing Federal funds and conveying important information on the services being provided to job seekers and employers. As required by WIOA, the Department will consult with a wide range of stakeholders to establish guidelines for this system (see WIOA sec. 116(i)(1)).

§ 682.210 What are allowable statewide employment and training activities?

In addition to the required statewide activities, States are provided with significant flexibility

to innovate within the workforce system with various allowable statewide employment and training activities. These allowable activities are vital to ensuring a high quality workforce system, and can be used to ensure continuous improvement throughout the system. This regulation is not designed to be an exhaustive list, but more illustrative of the types of allowable statewide activities that may be provided with these funds.

Proposed § 682.210(a) provides that State administration of the adult, dislocated worker, and youth employment and training activities is an allowable statewide employment and training activity. This proposed section maintains the same 5 percent administrative cost limit that existed under WIA and clarifies that the 5 percent is calculated based on the total allotment received by the State and counts towards the amount reserved for statewide activities.

Proposed § 682.210(b) permits States to use WIOA funds to develop and implement innovative programs and strategies designed to meet employer needs, including small business needs. The workforce system provides services to dual customers—the job seeker and the employer. The Department values ways in which States can engage businesses with all levels of the workforce system. Under this section, States have authority to carry out a variety of programs identified in WIOA sec. 134(a)(3)(A)(i), such as sectoral and industry cluster strategies, microenterprise and entrepreneurial training, and utilization of business intermediaries.

Proposed § 682.210(c) permits States to develop and implement strategies for serving individuals with barriers to employment and encourages States to partner with other agencies to coordinate services among all the one-stop partners.

Proposed § 682.210(d) and (e) allow the development and identification of education and training programs that respond to real-time labor market analysis, that allow for use of direct or prior assessments, and that provide credit for prior learning, or which have other characteristics identified

in WIOA sec. 134(a)(3)(A)(iii). States can also use these funds to increase training for individuals placed in non-traditional employment.

Proposed § 682.210(f) permits States to undertake research and demonstrations related to meeting the education and employment needs of youth, adults and dislocated workers, as stated in WIOA secs. 129(b)(2)(A)(i)and (ii) and sec. 134(a)(3)(A)(ix).

Proposed § 682.210(g) provides that States may utilize statewide funds to support the development of alternative, evidence-based programs, and other activities which increase the choices available to eligible youth and encourage them to reenter and complete secondary education, enroll in post-secondary education and advanced training, progress through a career pathway, and/or enter unsubsidized employment that leads to economic self-sufficiency.

Proposed § 682.210(h) provides that States may utilize statewide funds to support the provision of career services throughout the one-stop delivery system in the State.

Proposed § 682.210(i) provides that States may incorporate a variety of financial literacy identified in WIOA sec. 129(b)(23)(D) activities into the service delivery strategy within the one-stop delivery system. Financial literacy activities are important services for job seekers to receive as part of their career services. The Department encourages States to develop and implement strategies for local areas to utilize to coordinate financial literacy services to participants under this authority and to provide financial literacy activities to youth under

§ 682.210(i).

Proposed § 682.210(j) allows for States to provide incentive grants to local areas for reaching performance goals. Incentive grants can be an effective way to develop and maintain a

culture of continuous improvement throughout the workforce system.

Proposed § 682.210(k) allows for States to provide technical assistance to local areas, CEOs, one-stop operators, one-stop partners, and eligible providers in local areas for the development of exemplary program activities and the provision of technology to facilitate remote access to services provided through the one-stop delivery system in the State (WIOA sec.

129(b)(2)(E));

Proposed § 682.210(l) allows States to provide technical assistance to local areas using pay-for-performance contract strategies. Under WIOA, pay-for-performance is an allowable use of funds that could potentially be an effective mechanism to improve participant outcomes.

Technical assistance will be of vital importance to ensure these strategies are being implemented effectively. Under this authority, such technical assistance may include providing assistance with data collections, meeting data entry requirements, identifying levels of performance, and conducting evaluations of pay-for-performance strategies.

Proposed § 682.210(m) allows for States to utilize technology to allow for remote access to training services provided through the one-stop delivery system. The Department recognizes that there are many different means by which individuals may get training and that the use of technology may be particularly helpful to participants in rural areas. The Department encourages States to develop and build upon strategies that enable job seekers to connect with the workforce system remotely.

Proposed § 682.210(n) allows States to conduct activities that increase coordination between workforce investment activities and economic development approaches. This proposed regulation

also allows States to undertake activities that provide coordination with services provided by other agencies, such as child support services and assistance (provided by State and local agencies carrying out part D of title IV of the SSA (42 U.S.C. 651 et seq)), cooperative extension programs (carried out by the Department of Agriculture), programs in the local areas for individuals with disabilities (including the programs identified in WIOA sec.

134(a)(3)(A)(viii)(II)(cc)), adult education and literacy activities including those carried out by public libraries, and activities in the corrections system to connect ex-offenders reentering the workforce. The Department strongly encourages States to engage in these coordination activities. States are also encouraged to use funds to develop and disseminate workforce and labor market information (WLMI).

Proposed § 682.210(o) allows States to implement promising practices for workers and businesses as described in WIOA sec. 134(a)(3)(A).

Proposed § 682.210(p) allows States to develop economic self-sufficiency standards that specify the income needs of families, including the number and ages of children. The Department recognizes that different regions in a State may have different levels of self-

sufficiency; therefore the proposed regulation allows for States to take geographical considerations into account in developing self-sufficiency standards.

Proposed § 682.210(q) allows States to develop and disseminate common intake procedures across core and partner programs, including common registration procedures. The Department strongly encourages States to utilize this approach in a customer-focused way. By developing common procedures one-stop staff can reduce duplication and enhance the job seeker experience in the workforce system.

Proposed § 682.210(r) encourages coordinating activities with the child welfare system to

facilitate provision of services to children and youth who are eligible for assistance.

§ 682.220 What are States' responsibilities in regard to evaluations and research?

The Department proposes to add rules on new State responsibilities and opportunities in regard to evaluation and research under WIOA sec. 116(e). State and Federal evaluations and research are intended to improve the quality and effectiveness of programs under WIOA, and contribute to an expanding body of knowledge on customers, their needs, existing services, and innovative approaches. Examples of the strategies that might be explored in evaluation and research include, but are not limited to, interventions envisioned in WIOA itself, such as integrated systems, coordinated services, career pathways, and multiple forms of engagement with businesses.

WIOA continues the long-standing support of evaluation and research found in prior law, but strengthens it in several ways, including permitting States to evaluate activities under all of the title I – IV core programs, including adult education and vocational education, and permitting the use of funds from any of these programs for evaluations. WIOA expands coordination and the consultative process regarding evaluations and research beyond the workforce system to

State agencies for the other core programs. Further, WIOA now also requires States to coordinate their own studies with evaluations and research projects undertaken by the Departments of Labor and Education, as well as to cooperate in provision of data and information for such Federal evaluations.

Provisions on the Department's role in evaluation and research, now found under WIOA sec. 169 (corresponding to secs. 171 and 172 in WIA), authorize a wide array of studies.

Evaluation and research projects, permissible under WIOA sec. 169 include process and outcome

studies, pilot and demonstration projects, analyses of programmatic and economic data, impact and benefit-cost analyses, and use of rigorous designs to test the efficacy of various interventions, such as random assignment. WIOA also implies that State evaluations are synonymous with multiple forms of research to test various interventions and to examine program services and outcomes in greater depth and over a longer time frame than is typically done for performance accountability purposes for State and local programs.

Section 169 also includes numerous examples of studies to be conducted in collaboration with other Federal Departments. WIOA sec. 169 also requires several research projects (evaluations of title I programs, a study of career pathways in health and child care, and research on equivalent pay), suggests seven research projects (relating to disconnected youth, business needs, nontraditional occupations, performance indicators, public housing assistance recipients, older workers, and credentials for prior learning), and permits studies of Federally-funded employment-related programs and activities under "other provisions of law." An evaluation of Job Corp is also required under WIOA sec. 161.

WIOA recognizes in sec. 116(e) the vital role of States in providing various forms of quantitative and qualitative data and information for Federal evaluations and research. Data,

survey responses, and site visit information, from both the State and local levels are essential in Federal research designed to understand and evaluate various existing systems and services as well as new interventions. All of these forms of data and information are needed to understand key participant characteristics, labor market outcomes, the role of decision-makers, how faithfully interventions are implemented, and the quality of the customer experience. Further, there are multiple potential data sources which could include, for example, UI administrative data and wage records, data from other workforce programs, various documents, and individual or focus group interviews with State officials, local program staff and customers.

To assure that data are consistently available from all States, the rules emphasize the need for States to cooperate, to the extent practicable, in data collection activities for evaluations conducted by the Departments of Labor and Education, as related to services under WIOA and to other employment-related programs and activities. The rules also clarify the need for States to provide data from sub-State level and from State and local workforce boards and, further, to encourage provision of data by other partner programs. A method for informing the Department about possible problems in providing the various forms of data and for resolving such problems is also proposed below.

Specifically, the rules include the following:

Proposed § 682.220(a)(1) explains that under WIOA secs. 116(e), 129(b)(1)(A) and 134(a)(2)(B)(vi), States are required to use funds reserved by the Governor for statewide activities (the State set-aside) to conduct evaluations of activities of the core programs.

Paragraph (b)(1) requires States to coordinate such evaluations with Federal evaluation and research activities under WIOA secs. 169 and 242(c)(2)(D) (regarding adult education), under the Rehabilitation Act of 1973 and under the Wagner-Peyser Act [29 U.S.C. 49i(b)]. Paragraph

(a) delineates the role of evaluations and research in promoting continuous improvement and high performance in existing programs and identifies an additional purpose of evaluation activities: testing innovative services and strategies.

Proposed § 682.220(a)(2) clarifies that the States may use set-aside funds to conduct other research and demonstration projects that relate to the education and employment needs for youth, adults and dislocated workers. Proposed § 682.220(a)(3) clarifies that States may use funds from other WIOA title II–IV core programs but only as determined through the consultative processes

required with State and Local Boards and agencies responsible for the core programs as referenced in paragraph (b)(1). Paragraph 682.220(e) highlights the opportunity for States to use and combine funds from other sources (consistent with Federal and State law, regulation, and guidance). The sources might include other Federal and State grants and contracts, as well as private philanthropic or other sources.

Proposed § 682.220(b) promotes State efforts to conduct evaluations and research, assure they relate to State goals and strategies, and are coordinated and designed in conjunction with State and Local Boards and other agencies responsible for the core programs. The proposed rule also lists some key features that States can include their evaluations and research projects when appropriate and feasible, not as a "one-size-fits-all" checklist of requirements for every evaluation and research project. As such, paragraphs (b)(2) through (4) implement WIOA sec. 116(e), but qualifies the requirements for States to include an analysis of customer feedback and

of outcome and process measures <u>when appropriate</u>, to coordinate with Federal evaluations <u>to the</u>

<u>extent feasible</u>, and to use the most rigorous analytical and statistical methods <u>that are reasonably</u>

<u>feasible</u>.

Proposed § 682.220(c) implements sec. 116(e)(3) of WIOA, which requires States to share their evaluations with the public, including through electronic means, such as posting the results of all types of research and evaluations that States conduct on the relevant State Web site.

Proposed § 682.220(d)(1) implements sec. 116(e)(4) of WIOA, which requires States to cooperate, to the extent practicable, in providing data, responding to surveys, and allowing site visits

in a timely manner for Federal evaluation, research, and investigation activities conducted by the Secretaries of Labor and Education or their agents under WIOA secs. 169 and 242, the Rehabilitation Act of 1973, and the Wagner-Peyser Act, as listed in § 682.200(d) and above. (The provision of UI data for Federal evaluations and research is subject to regulations found in 20 CFR part 603.) The Department of Labor intends to work with States and the United States Census Bureau (Census) to explore the potential to meet the requirement that States provide UI wage record data for Federal evaluations and research using the wage record data States currently provide to Census for the Longitudinal Employer-Household Dynamics (LEHD) program. This approach to provision of UI data may reduce burden on State UI infrastructure, while also making the LEHD data set more useful to a broad array of researchers. Since data and survey responses from local subgrantees and State and local workforce boards are often critical in Federal evaluation and research projects, the rule also requires that States provide timely data and survey responses from these entities and that States assure that subgrantees and boards allow timely site visits for Federal evaluations. States are proposed to assume these responsibilities because of their relationship with and support of the boards as well as their role in overseeing the operation of subgrantees. Since States do not set the requirements for other one-stop partners, proposed § 682.220(d)(2) requires States to encourage these partners to cooperate in data provision for the relevant Federal evaluations and research.

Proposed § 682.220(d)(3) requires a Governor to inform the Secretary in writing if a State finds that it is not practicable to participate in timely provision of data, survey responses and site visits for Department of Labor or Department of Education evaluations and research, and, further, to explain why it is not practicable for the State to provide the requested information. This explanation will help the Department to work more effectively with the State to accommodate its concerns and mitigate or overcome any problems preventing the State from providing the information needed for Federal evaluations or research conducted under the various authorities cited in § 682.200(d).

Proposed § 665.220(e) provides that States may use or combine funds, consistent with Federal and State law, regulation, and guidance, from other public or private sources, to conduct evaluations, research, and demonstration projects relating to activities under the WIOA title I – IV core programs. The Department will provide information, technical assistance, and guidance to support States in conducting their own evaluations and research, at the highest levels of quality and integrity, consistent with State goals and priorities, and using methodologies appropriate to the research objectives and the funds available. The technical assistance and guidance will also address how States can coordinate with studies conducted by the Departments of Labor and Education under WIOA and cooperate in providing data and other information

for such Federal research.

4. Subpart C – Rapid Response Activities

Introduction

This subpart discusses the important role that rapid response plays in providing customer-focused services both to dislocated workers and employers, thereby ensuring immediate access to affected workers to help them quickly reenter the workforce. The proposed regulations reflect

the Department's experience in managing the PYs and lessons learned from the innovations and best practices of various rapid response programs around the country in planning for and meeting the challenges posed by events precipitating substantial increases in the number of unemployed

individuals in States, regions and local areas. The proposed regulations provide a comprehensive framework for operating successful rapid response programs in a way that promotes innovation and maintains flexibility to enable States to successfully manage economic transitions.

Section 134(a)(2) of WIOA authorizes the use of reserved funds for statewide activities to plan for and respond to events that precipitate substantial increases in the number of unemployed individuals. Except for a new provision, at sec. 134(a)(2)(A)(ii), that addresses the use of unobligated funds for rapid response activities, WIOA largely replicates the language in sec. 134 of WIA. The proposed regulations provide additional, detailed direction regarding required and optional rapid response activities. The WIA regulations concerning the rapid response program provided substantial flexibility in program design and implementation. This flexibility allowed for customized planning and responses based upon specific factors in a given situation—an important component to delivering effective services. However, some States and local operators did not understand the full range of activities allowable under the program. In crafting the proposed regulations, the Department has worked to maintain the same flexibility that the current regulation allows, while providing more detailed information about appropriate activities, such as layoff aversion, engaging business, and illustrating how these funds can be used.

Our proposed approach is based on the premise that successful rapid response programs are flexible, agile, and focused on promptly delivering comprehensive solutions to businesses and workers in transition. Rapid response, when operated successfully, delivers on the promises

that the workforce system makes to businesses, workers, and communities—to provide economically valuable solutions to businesses and critically important services to workers at the time when they are most needed. These proposed regulations are designed to ensure that rapid response programs in all States are capable of meeting those promises, that service levels are consistent in quality yet customized to specific events, and activities are driven always by the goal of preventing or

minimizing unemployment. The proposed regulations also focus specifically on anticipating needs and planning for them, rather than only responding to layoff events.

§ 682.300 What is rapid response, and what is its purpose?

Proposed § 682.300 describes the purpose of rapid response—to promote economic development and vitality—and identifies the activities and responsibilities to meet this purpose. Proposed § 682.300(a) identifies as key components of rapid response the strategies and activities necessary to plan for and respond to layoffs or other dislocation events, including natural or other disasters. While many States will provide rapid response services for layoffs of all sizes, some States have restricted rapid response services to layoffs of 50 or more workers, or for which they received a Worker Adjustment and Retraining Notification (WARN) Act notice. While rapid response is required for closures and mass layoffs, the Department's intention is that effective services are provided to as many workers and companies as possible. Most employers have fewer than 50 workers, and thus, a substantial percentage of layoffs do not qualify for WARN coverage; therefore, using either of these criteria as the only triggers for the provision of rapid response assistance means that most companies and workers affected by dislocations will not be provided rapid response services. Establishing a strict threshold is counter to the purpose

of rapid response, and prevents many workers and companies from receiving valuable services at a time when they are needed.

Therefore, the proposed regulations do not define any threshold for the size of a layoff for which rapid response services are provided. The regulation does not specifically address plant closures because the Department considers the layoffs associated with closures to be covered under the general principles applicable to layoffs. Based on the fact that most companies employ fewer

than 50 workers and the rapid response services provide significant value to both affected workers and businesses, the Department expects that States and local areas will provide rapid response services to layoffs and closures of all sizes, as practicable. However, for any plant closure or layoff of 50 or more, rapid response services must be provided per the statutory reference to mass layoffs. Additionally, rapid response must be provided for any layoff which receives a WARN notice. State and local area rapid response providers must establish policies and procedures that allow them to serve the most companies and affected workers or to determine the specific scenarios which meet this criterion and for which they will provide rapid response services.

Proposed § 682.300(a) identifies the need to expeditiously deliver services in order to enable dislocated workers to transition quickly to new employment. The two critical phrases in this section—"plan for and respond" and "as quickly as possible"—demonstrate that rapid response must include strategic planning and other activities that will ensure that dislocated workers can be reemployed as soon as possible.

Proposed § 682.300(b) explains that the purpose of rapid response is a proactive, strategic set of actions, not simply a response to layoffs. The proposal establishes rapid response as a critical tool in managing economic transition and supporting economic growth in communities.

As stated in the proposal, rapid response includes a wide array of strategies and activities of which layoff aversion is a key component. Proposed paragraph (b)(1) describes the direct and informational services rapid response must provide to workers affected by layoffs.

Proposed paragraph (b)(2) describes the services that rapid response must provide to businesses. Building and maintaining relationships with the business community, throughout the growth and decline that characterizes the business cycle, is a critical aspect of rapid response; establishing and maintaining these relationships allows for early knowledge of potential layoffs. This

information not only provides time for undertaking actions that may prevent the layoffs from occurring but may also allow affected workers to connect, in a timely manner, with businesses that can use their skills, thereby avoiding unemployment or minimizing its duration.

Engaging with businesses and delivering effective solutions to their needs is critical—to allow rapid response teams to meet and work with individuals affected by layoff, preferably before layoff and on company time, but also to identify companies that are growing and may hire dislocated workers or to deliver services that may prevent workers at those companies from being laid off in the future.

Proposed paragraph (b)(3) describes the role that rapid response must play in developing strong, comprehensive networks of partners and service providers to ensure that all needed services are provided to businesses, workers, and communities.

Proposed paragraph (b)(4) covers the need for rapid response to undertake strategic planning and data gathering to ensure readiness to act appropriately whenever the need arises.

§ 682.310 Who is responsible for carrying out rapid response activities?

Proposed **§** 682.310 is a new section that was split from § 665.300 under the current regulations. Its text follows the current regulation, § 665.300(b), without substantive change, but it changes the verb used to describe the delivery of rapid response from "provide" to "carry out" to track the language used in WIOA sec. 134(a)(2).

§ 682.320 What is layoff aversion, and what are appropriate layoff aversion strategies and activities?

Proposed § 682.315 significantly enhances the required activities from those set forth in the current regulation. Rapid response experience under WIA has shown the importance of layoff aversion as a critical component of a successful rapid response program, to be used by States and Local Boards to prevent or minimize layoffs. This section describes strategies and activities which are designed to prevent or minimize the duration of unemployment.

Layoff aversion is a comprehensive approach requiring the integration of data, relationships, partnerships, and policies and procedures to allow an assessment of the economic situation that exists within a given area. This approach enables the development of a plan that may be applied, at any time, to intervene and manage transition that occurs within that area.

Layoff aversion strategies and activities are customized to specific needs, quickly deployable, informed by economic data, and designed and coordinated with partners as necessary. This proposed section describes examples of these strategies and activities.

Proposed § 682.315 provides a definition for layoff aversion, which has been adapted from TEGL 30-09, and describes a number of potential layoff aversion strategies and activities that rapid response programs must include, many of which were first described in (TEN) 9-12.

§ 682.330 What rapid response activities are required?

Proposed § 682.330 describes rapid response activities that are required to be carried out with rapid response funds. The elements include activities that have been previously discussed in guidance and through technical assistance; elements that are required by the current

regulation; and elements that were previously allowable, but which are now required. In particular, the regulation now specifically identifies layoff aversion activities and the provision of additional

assistance to local areas experiencing increased dislocation events as required rapid response activity (paragraphs (a) and (i)) and adds new responsibilities in paragraphs (g) through (k). The Department's experience under WIA has shown that such activities are critical for a successful rapid response program. To meet the needs of affected workers and businesses, a rapid response program must be proactive, data-driven, engaged with businesses, and focused on preventing layoffs or minimizing their negative impacts. Substantially increasing the level of required activities under rapid response is designed to drive those outcomes. By undertaking these activities, the State and local areas will be able to effectively manage, review and evaluate rapid response and layoff aversion efforts.

Proposed § 682.330(a) describes layoff aversion as a required rapid response activity. Layoff aversion strategies and activities are described in proposed § 682.315. The proposal requires that States and local areas have the capability to conduct layoff aversion; however, it is left to the discretion of the operators of rapid response programs to determine which strategies and activities are applicable in a given situation, based upon specific needs, policies, and procedures within the State and operating areas. The current regulation requires rapid response operators to assess the potential for averting layoffs; this proposal expands on this requirement by listing a number of specific strategies and activities that are critical to maintaining readiness and ensuring the ability to capitalize on opportunities that will prevent, or minimize the duration of, unemployment.

Proposed § 682.330(b) through (e) are consistent with the current regulations; these activities are retained as required under the proposed WIOA regulations.

This proposed regulation does not define the term "emergency services" as used in proposed § 682.330(f); however, in the past States and local areas have used rapid response teams and resources for a wide array of activities in response to disaster situations. Such activities have included outreach, support, and assistance for impacted individuals with accessing UI or disaster

unemployment assistance; acquisition of and support for mobile one-stop units; demographic information gathering for potential emergency grant applications; and coordination with Federal Emergency Management Agency (FEMA) or other disaster-response organizations. State and local area rapid response providers must work closely with other State and local agencies and other critical partners through strategic planning processes to ensure effective and immediate responses can be undertaken when the need arises.

Proposed § 682.330(g) discusses the requirement that State or local rapid response programs collect and utilize data as a core component of their work. Proposed § 682.330(g)(1) requires States and/or local areas to identify sources of information that will provide early warning of potential layoffs, and to gather this data in a manner that best suits their needs.

Proposed § 682.330(g)(2) requires the processing and analysis of a range of economic data and information to ensure the best possible services are delivered to businesses and workers at the appropriate time. Proposed § 682.330(g)(3) requires that States and/or local areas track data and other information related to the activities and outcomes of the rapid response program, so as to provide an adequate basis for effective program management, review, and evaluation of rapid response and layoff aversion efforts.

Proposed § 682.330(h) highlights the need for strategic and operational partnerships.

Rapid response operators must develop and maintain partnerships with a wide range of partners to ensure the capability to deliver needed services and resources to businesses, workers, and

communities whenever the need arises. The proposal provides some examples of organizations with which to partner, but States and local areas should establish partnerships with those organizations that are necessary to ensure the successful functioning of their rapid response

program. Proposed § 682.330(h)(1) discusses the use of these partnerships to conduct strategic planning and to ensure that assistance provided to companies, workers, and communities is comprehensive. Proposed § 682.330(h)(2) requires that the partnerships developed to support rapid response programs actively share information on resources available on a regular basis to ensure that the needs of businesses, workers, and communities will be met at the time they are needed.

Proposed § 682.330(i) requires rapid response services to be provided to workers upon the filing of a petition for TAA. If the Department no longer processes TAA petitions due to an expiration or termination of the program, there will be no explicit requirement pertaining to TAA participants. However, such individuals, as dislocated workers, will continue to receive rapid response services upon notification of layoff consistent with State or local area procedure.

Proposed § 682.330(j) requires States to provide additional assistance to local areas that experience an event that causes significant layoffs that exceed the capacity of the local area to respond to with existing formula resources. This requirement is found in the current regulation at § 665.300(b); the Department has made slight wording changes and moved it to this part. The additional assistance is required by WIOA sec. 134(a)(2)(A)(II). Proposed § 682.330(j) establishes the requirement that such assistance be provided; proposed § 682.350 defines and describes what additional assistance entails.

Proposed § 682.330(k) describes the role of rapid response in organizing or supporting labor management committees. This proposed paragraph uses the language from the current regulation that addresses this point, 20 CFR 655.310(c)(1) and (2). This support is required by WIOA sec. 3(51), as it was under WIA sec. 101(38), where labor and management voluntarily agree that the establishment of such a committee is appropriate. It has been the Department's experience that in some circumstances such committees have proven ineffective; therefore, their establishment

is not a required rapid response activity. However, where labor and management desire to establish such a committee, guidance and financial support must be provided by rapid response.

The proposal does not include the requirement, now in 20 CFR 655.310(c)(3), that a neutral chairperson be appointed for such a committee. Based on feedback received regarding the difficulties involved in obtaining a neutral chairperson who is familiar with the immediate problem, the leadership of such a committee is better left to the discretion of the parties involved.

The proposal does not include the language in the current regulation referring to "workforce transition committees"—the Department now refers to these as groups as "community transition teams." Their role is explained in proposed § 682.340.

§ 682.340 May other activities be undertaken as part of rapid response?

Proposed § 682.340 identifies additional activities that may be undertaken as part of the rapid response program. Proposed § 682.340(a) is designed to allow for innovative approaches and to ensure additional flexibility to prepare for and respond to layoffs, and to react to unusual or unforeseeable situations. Although the proposal leaves considerable discretion, any allowable activities must be designed to prevent or minimize the duration of unemployment, or to develop strategies or activities that will lead to better programmatic outcomes.

Proposed § 682.340(b) provides for the creation and operation of community transition teams. Community transition teams are designed to expand the ability of the public workforce system to enlist partners, community organizations, and others to provide services and resources in communities or areas in response to major layoffs or other events that have caused significant impact that are beyond the capacity of the public workforce system to address. Rapid response funds may

be used to organize or sustain community transition teams that are organized to provide relief to impacted communities.

§ 682.350 What is meant by "provision of additional assistance" in Workforce Innovation and Opportunity Act?

Section 665.330 of the current regulations is not maintained in the proposed regulations.

The North American Free Trade Agreement (NAFTA) program to which it refers has ended. Proposed § 682.350, which describes the provision of "additional assistance" to local areas, has been largely maintained from the existing WIA regulations. The Department has made a slight change to the language in the existing regulations for clarity, but the concept has not changed. While the provision of additional assistance is required, as described in proposed § 682.330(i), the mechanisms by which such assistance may be provided are left to the discretion of the States.

§ 682.360 What rapid response, layoff aversion, or other information will States be required to report to the Employment and Training Administration?

Proposed § 682.360 does not appear in the current regulations; it requires that States report information about the receipt of rapid response services by individuals enrolled as dislocated workers. This information is currently required under WIA reporting guidelines. The Department also reserves authority to issue further guidance on the reporting of rapid response activities. Should such reporting become required, the Department will work with States and local areas to ensure that reporting burdens are minimized while still meeting program reporting goals.

§ 682.370 What are "allowable statewide activities" for which rapid response funds remaining unspent at the end of the year of obligation may be recaptured by the State?

Proposed § 682.370 addresses the WIOA provision at sec. 134(a)(2)(B) that allows a State to "recapture" any funds reserved for rapid response that remain unspent at the end of the PY of obligation and utilize them for State set-aside activities. The Department has provided further definition around required and allowable activities under the rapid response provisions of the WIOA, which may support States to more fully utilize rapid response funds while better serving businesses and workers.

F. ***Part 683 – Administrative Provisions Under Title I of the Workforce Innovation and Opportunity Act***

1. Introduction

This proposed part establishes the administrative provisions that apply to formula and discretionary grants and cooperative agreements authorized under title I of WIOA. Some administrative provisions are also applicable to grants provided under the Wagner-Peyser Act, as indicated in specific sections of this part. The remaining Wagner-Peyser Act administrative rules are still located in 20 CFR part 658. Wagner-Peyser grants are included in this part to ensure consistent application of the common administrative provisions that apply to all grants awarded under title I of WIOA and the Wagner-Peyser Act. For instance, the audit requirements for discretionary and formula grantees for title I and Wagner-Peyser Act funds can be found in one section. The internal control requirements for both programs can be found in this part as well.

However, contracts, rather than grants or cooperative agreements, are used to award most funds authorized for Job Corps. As such, the administrative provisions for Job Corps (subtitle C of title I of WIOA) will be addressed separately in 20 CFR part 686.

Many of the proposed requirements in this part 683 are impacted by the Department's new rule "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards Final Rule," at 2 CFR part 2900 published on December 19, 2014, and OMB's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards Final Rule, dated December 26, 2013 found at 2 CFR part 200 ("Uniform Guidance" or "2 CFR part 200"). The Uniform Guidance, which can be found at http://www.gpo.gov/fdsys/pkg/FR-2013-12-26/pdf/2013-30465.pdf, streamlines and consolidates

OMB Circulars A-21 (2 CFR part 220), A-50, A-87 (2 CFR part 225), A-89, A-102 (29 CFR part

97), A-110 (29 CFR part 95), A-122 (2 CFR part 230), and A-133 (29 CFR part 96) into a single document. The Uniform Guidance standardizes the administrative, cost, and audit provisions for nearly all grants across the Federal government including those awarded by the Department's WIOA Federal partners, including ED, HHS, and the Department of Agriculture. Federal agencies were allowed to submit exceptions, as defined at 2 CFR 200.102, that deviate from the Uniform Guidance. The list of the Department's exceptions to the Uniform Guidance is available at 2 CFR part 2900. Requirements of this Uniform Guidance, including the Department's exceptions, apply to all grants and cooperative agreements provided under this part.

In this proposed part, the Department hopes to strengthen its administration of grants and enhance program results by providing consistent and uniform guidance that increases accountability and transparency, promotes fiscal integrity, and reduces duplication.

2. Subpart A – Funding and Closeout

This subpart addresses the grant life cycle from fund availability to closeout for formula grants awarded to States under WIOA title I, subtitle B, and the Wagner-Peyser Act, and the grant life cycle for discretionary or competitive WIOA grants, awarded under subtitle D of title I. This subpart identifies the three financial assistance instruments that will be used to award funds under title I of WIOA and Wagner-Peyser: contracts, grant agreements, and cooperative agreements. One shift from WIA to WIOA is that the Secretary will no longer use the Governor/Secretary agreements used under WIA. In compliance with the Uniform Guidance, the Department will use Notices of Award as the funding instrument for all grants, both formula and discretionary. Another shift to promote full expenditure of funds is to require that recipients expend the funds with the shortest period of performance before expending other funds. This proposed subpart also implements the WIOA statute's flexibility in allowing a Local Board to transfer up to 100 percent of a PY allocation between the adult and dislocated workers funding streams subject to the Governor's approval. Additionally, the subpart proposes processes on the handling of unobligated rapid response funds and ETA's role in the annual reallotment process that takes place between the States and the Department after each PY. The proposed responsibility review provisions are also different from those under WIA to reflect the new requirements in the Uniform Guidance. Lastly, this subpart outlines the closeout procedures for title I of WIOA and Wagner-Peyser awards.

§ 683.100 When do Workforce Innovation and Opportunity Act grant funds become available for obligation?

This proposed section describes the statutory requirements for the Department's release of formula funds under title I of WIOA and the Wagner-Peyser Act. WIOA youth funds may be released earlier than other formula funds, as early as April, to assist States and locals in planning youth activities. Adult and dislocated worker funds will be awarded on a PY basis in two payments: in July after the beginning of the PY and a second release of funds in October of each

PY. Wagner-Peyser funds will also be released on a PY basis, in July of each fiscal year. The availability of funds awarded on a competitive or discretionary basis will be dependent on the annual appropriation and on the grant or cooperative agreement.

§ 683.105 What award document authorizes the expenditure of funds under title I of the Workforce Innovation and Opportunity Act and the Wagner-Peyser Act?

This section recognizes the use of the three funding instruments that conform with the Uniform Guidance: grant agreements, cooperative agreements, and contracts. The Department will no longer use the Governor/Secretary agreement, used under WIA, as a funding instrument because it is not consistent with the Uniform Guidance. Proposed paragraphs (b) through (e) of this section specify the type of funding instruments that will be used for different WIOA programs. Proposed paragraph (e)(3) implements WIOA sec. 169(b)(6)(B), which states that the Department may not award a contract or grant for research, studies, or multi-State projects "to the same organization for more than 3 consecutive years unless such grant or contract is competitively reevaluated within such period." The Department interprets the central purpose of this provision to promote competition—it prohibits the Department from awarding lengthy contracts or grants on a non-competitive basis to the same organization. However, as long as the contract or grant is awarded on a competitive basis, the project (and therefore the award) may span over a period of more than 3 years. This is consistent with the Department's need to conduct lengthy research and other projects and with the new flexibility to incrementally fund evaluations, research, and other projects, provided in sec. 189(g)(2)(B)(ii) of WIOA. Finally, proposed paragraph (f) of § 683.105 makes clear that all three funding instruments are subject to the closeout procedures in the Uniform Guidance.

§ 683.110 What is the period of performance of Workforce Innovation and Opportunity Act title I and Wagner-Peyser Act funds?

This proposed section describes the period of performance for different types of WIOA title I and Wagner-Peyser Act grant awards. Proposed paragraph (a) provides a general explanation about expenditure periods. Specifically, the period of performance for grants is the statutory period of availability for expenditure, unless otherwise provided in the grant agreement. Funds must be spent in a timely manner; if they are not expended by the end of the performance period, they risk losing their availability. Grantees must expend funds with the shortest period of availability first, unless otherwise authorized in the agreement or in a subsequent modification.

The proposed paragraph includes a sentence encouraging grantees to follow this rule, so that they use funds expeditiously and effectively. This approach should help reduce unexpended funds at the end of a grant's period of performance

Proposed § 683.110(b) through (h) restate the applicable periods of performance for WIOA and the Wagner-Peyser Act grants. WIOA did not change these periods for formula funds—adult/dislocated worker and youth formula funds allotted during any PY are available for expenditure by the State only during that PY and the 2 succeeding PYs; funds allocated by the State to a local area for any PY are available for expenditure only during that PY and the succeeding PY (WIOA sec. 189(g)(2)). Proposed paragraph (c)(2) also requires that funds unexpended by a local area in the 2 year period be returned to the State and be used for specific purposes. This is unchanged from the WIA regulation at 20 CFR 667.107. However, proposed paragraph (c)(1)(ii) notes an exception to the 2-year performance period for local areas in the case of WIOA Pay-for-Performance contracting strategies, a new option added by secs.

129(c)(1)(D) and 134(d)(1)(iii) of WIOA and more fully discussed in proposed subpart E. Under

this paragraph, and in accordance with sec. 189(g)(2)(D) of WIOA, funds used by local areas to carry out WIOA Pay-for-Performance contract strategies remain available until expended.

Additional information on this provision is explained below in the discussion of proposed

§ 683.530. Proposed paragraph (h) also implements sec. 5(c) of the Wagner-Peyser Act, and explains that funds allotted to States for grants under secs. 3 and 15 of the Wagner-Peyser Act for any PY are available for expenditure by the State receiving the funds only during that PY and the 2 succeeding PYs.

Proposed paragraphs (d) and (e) provide the expenditure period for the Native American programs and MSFW programs under secs. 166(c) and 167(a) of WIOA, respectively. In both programs, WIOA requires the Secretary to enter into grants or contracts with eligible entities every 4 years. Accordingly, the proposed paragraphs explain that funds awarded by the Department under these programs are available for expenditure during the period identified in the award document, which will not exceed 4 years.

For grants awarded for research or evaluations under WIOA sec. 169, funds remain available until expended, in accordance with sec. 189(g)(2)(B)(i) of WIOA, or for the period of performance specified in the terms and conditions of the award. The Secretary has the authority to limit the period of expenditure of these funds in the terms and conditions of the grant award.

Finally, proposed paragraph (f) explains that funds allotted for other programs under title I of WIOA, including secs. 170 (National Dislocated Worker Grants (NDWGs) and 171 (Youthbuild program), are available for expenditure for the period of performance identified in the grant or contract.

§ 683.115 What planning information must a State submit in order to receive a formula grant?

This proposed section implements the statutory requirement that an approved Unified State Plan or Combined State Plan be submitted before formula funds under title I, subtitle B, of WIOA and Wagner-Peyser can be issued. As discussed in the preamble discussion of part 676, WIOA is apparently inconsistent as to whether outlying areas must submit a Unified or Combined State Plan to receive funding under title I. The preamble discussion of part 676 details the apparent inconsistency and identifies potential options to resolve the inconsistency.

§ 683.120 How are Workforce Innovation and Opportunity Act title I formula funds allocated to local areas?

This proposed section describes the timeframe and formula factors a Governor must employ when allocating funds to local areas under secs. 128 and 133. It also specifies the steps a Governor must take when issuing allocations, including consulting with Local Boards and elected officials prior to issuing the allocation. The Governors must issue the funds to the local areas in a timely manner to allow for an adequate planning process.

This section also adopts the provision in sec. 134(2)(A)(ii) of WIOA that allows States to use unobligated rapid response funds, after the completion of the PY, for statewide activities.

§ 683.125 What minimum funding provisions apply to Workforce Innovation and Opportunity Act adult, dislocated worker, and youth allocations?

This proposed section addresses the minimum funding thresholds for States funded under subtitle B of title I of WIOA. Minimum funding thresholds are established to offset the impact of fluctuations in the formula factors that result from shifts in the economy that may be compounded by additional downturns in a particular industry or market in a particular State.

Sections 128(b)(2)(A) and 133(b)(2)(A) of WIOA contain these minimum funding requirements

to avoid significant swings in the amount of funding a State receives from 1 year to the next and to avoid any disruption of services or planning.

§ 683.130 Does a Local Board have the authority to transfer funds between the adult employment and training activities allocation and the dislocated worker employment and training activities allocation?

This proposed section provides flexibility to local areas to provide services in the areas of greatest need by allowing fund transfers of up to 100 percent of a PY allocation between the local adult and local dislocated worker allocations. Proposed § 683.130(b) requires a Local Board to obtain written approval of the Governor before making such a transfer. This flexibility to transfer funds is contained in sec. 133(b)(4) of WIOA.

§ 683.135 What reallotment procedures does the Secretary use?

This proposed section implements secs. 127(c) and 132(c) of WIOA, and explains the Department's process for recapture and reallotment of formula funds awarded to the States under title I. The proposed rule requires the Secretary to make the determination about whether the State has obligated 80 percent of the funds during the second quarter of each PY, rather than the first quarter. The procedures are the same as those in the WIA regulation at 20 CFR 667.150, with a few exceptions. The Department proposes to make the determination during the second quarter because State financial reports for the end of the PY period are not locked for modification until the next quarter's reports are submitted, which is during the second quarter of the PY. The Department also uses the term "each" to make it clear that the Department performs the reallotment procedures every PY with respect to the prior PY. Further, the section clarifies that the amount subject to recapture is based on the unobligated balance of the prior "program" year, in accordance with secs. 127(c)(2) and

132(c)(2) of the statute. Finally, the proposed

section clarifies the language that the recapture amount, if any, is determined separately for each funding stream.

Proposed § 683.135(c) defines the term "obligation" in accordance with the new OMB Administrative Requirements at 2 CFR 200.71 ("[w]hen used in connection with a non-Federal entity's utilization of funds under a Federal award, obligations means orders placed for property and services, contracts, and subawards made, and similar transactions during a given period that require payment by the non-Federal entity during the same or a future period."). The Department is using this definition to be consistent in our application of 2 CFR part 200, which is applicable to all funds awarded as grants or cooperative agreements. The proposed rule includes the same additions to the definition of "obligation" that are in the WIA regulation at 20 CFR 667.150(d)(1) and (2). The Department will continue to recognize the monies allocated to the local areas through the formula process under subtitle B of title I as obligated by the States

for the purposes of this section, and the Department has clarified this by adding the words "to the local area" in proposed paragraph (c)(1). Because of this, local transfers between the adult and dislocated worker funding streams do not impact the Department's recapture calculation for reallotment among the States. Similarly, the fact that up to 10 percent of local funds may be reserved for administrative costs does not affect the calculation. Recapture and reallotment of funds among States will occur during PY 2015 based on obligations in PY 2014, because the procedures for realloting funds did not change from WIA to WIOA.

New in WIOA, sec. 134(a)(2)(A)(ii) permits the Governor to use rapid response funds that remain unobligated after the first PY for which they were allotted to carry out statewide employment and training activities. The rapid response funds will be included in the calculation of unobligated

funding to determine if a State is subject to reallotment. Sections 127(c) and

132(c) of WIOA do not except rapid response funds from recapture—a tool which provides a strong incentive for States to expeditiously expend funds.

Excepting rapid response funds from the reallotment calculation would effectively remove the reallotment provision out of the statute. The Department generally is able to recapture and reallot only dislocated worker funds, because States immediately obligate 85 percent of their adult and youth program funds by allocating them to the local areas through the formula process. Because sec. 133(a)(2) of WIOA allows the Governor to reserve up to 25 percent of dislocated worker funds for rapid response activities, there may never be a situation where 80 percent of the remaining dislocated worker funds have not been obligated. Therefore, the Department includes rapid response funds in the calculation of a State's unobligated funding to determine if the State is subject to recapture and reallotment.

However, even if a State is subject to reallotment, the Governor may use the unobligated rapid response funds described in WIOA sec. 134(a)(2)(A)(ii) that remain available after reallotment to carry out statewide employment and training activities (in addition to rapid response activities). This preserves the additional flexibility provided to the Governors in WIOA sec. 134, by permitting Governors to use rapid response funds for statewide employment and training activities if not expended in the first year of availability. The Department welcomes comments on the proposed reallotment approach and potential impact on States, including the transfer flexibility.

§ 683.140 What reallocation procedures must the Governors use?

This proposed section describes the procedures for reallocating youth, adult, and dislocated worker funds among local areas in the State, in accordance with secs. 128(c) and 133(c) of WIOA,

and is unchanged from the WIA regulation at 20 CFR 667.160 except that

proposed paragraph (a) requires the Governor to consult with the State Board before reallocating, as required by secs. 128(c)(1) and 133(c)(1) of WIOA. Proposed paragraph (b) clarifies that the amount to be recaptured, if any, must be separately determined for each funding stream, and the calculations of unobligated balances in each stream must be adjusted to account for any funds that are transferred between funding streams under proposed § 683.130. The Department also notes that States and local areas are required to adhere to the definition of "obligations" in 2 CFR 200.71.

§ 683.145 What merit review and risk assessment does the Department conduct for Federal financial assistance awards made under Workforce Innovation and Opportunity Act title I, subtitle D?

This proposed section includes new requirements mandated by the Uniform Guidance.

First, there is a requirement for the use of merit review as a means to ensure that discretionary or competitive grants and cooperative agreements are awarded through a competitive, merit-based process. Second, this section incorporates the Uniform Guidance requirement, found at 2 CFR 200.205, that an agency must have "a framework for evaluating the risks posed by applicants before they receive Federal Awards." The factors the Grant Officer will consider are listed in this section and drawn from 2 CFR 200.205. Additional guidance will be issued to further specify how the Grant Officer will evaluate these factors in determining whether the applicant should be precluded from receipt of Federal financial assistance.

§ 683.150 What closeout requirements apply to grants funded with Workforce Innovation and Opportunity Act title I and Wagner-Peyser Act funds?

This proposed section is new; there is not one like it in the WIA regulations. It addresses closeout, which is an important component to complete the grant life cycle. This section

paraphrases the Uniform Administrative requirement sections on closeout and post-closeout adjustments (2 CFR 200.343-344). Specifically, when the period of performance ends, the Department will close out the Federal award after determining that all administrative actions and required work have been completed by the grant recipient. The grant recipient must submit all required reports and liquidate all obligations and/or accrued expenditures within 90 days of the end of the performance period. The Department will promptly reimburse the grant recipient for allowable reimbursable costs under the Federal award being closed out. The non-Federal entity must promptly refund any balanced of unobligated cash that is owed to the Department. The Department will settle for any upward or downward adjustments to the Federal share of costs after closeout reports are received. The grant recipient must account for any real and personal property acquired with Federal funds or received from the Federal government. The Department must complete all closeout actions no later than 1 year after receiving and accepting all required final reports; however, closeout does not affect the Department's right to disallow costs and recover funds, or obligations of the grantee, including audit, property management, and records retention requirements. After award closeout, a relationship created under the award may be modified or ended. Grant recipients that award funds to subrecipients must institute a timely closeout process after the end of performance to ensure a timely closeout in accordance with this section.

3. Subpart B – Administrative Rules, Costs and Limitations

Financial and Administrative Rules. These proposed regulations provide the rules

applicable to WIOA grants in the areas of fiscal and administrative requirements, audit requirements, and allowable cost/cost principles, and includes changes as the result of the Uniform Guidance at 2 CFR part 200 and any exceptions to 2 CFR part 200 that have been

released by the Department under 2 CFR part 2900. To support the fiscal integrity of the grant process, proposed § 683.220 requires recipients and subprecipients of WIOA or Wagner-Peyser Act funds to have an internal control structure in place that provides safeguards to protect personally identifiable information and other sensitive information. This section is new to WIOA; there is no corresponding section in the WIA regulations. Another new section provides rules for using real property with Federal equity. Under this provision, Federal equity acquired in real property through grants to States awarded under title III of the SSA or the Wagner-Peyser Act is transferred to the States that used the grant to acquire the equity; the portion of the equity transferred must be used to carryout activities authorized under these programs and/or WIOA. The new section also provides instructions on using properties funded with Reed Act equity or the Job Training Partnership Act (JTPA).

Costs and Limitations. This proposed regulation in § 683.205 delineates activities and

functions associated with the cost of administration as well as cost limitations (discussed in proposed § 683.205). The intent continues to be that the function and intended purpose of an activity should be used to determine whether the costs are administrative or programmatic.

There is a new section on salary and bonus limitations, which prescribes limits on salaries and bonuses in both WIOA and Wagner-Peyser programs. The proposed subpart also describes activities that are prohibited under WIOA, such as employment generating activities and activities that encourage business relocation.

Responsibilities toward participants and employees. These proposed regulations provide rules on employee displacement, wage and labor standards, health and safety standards, and non-discrimination.

Other rules. There is a new section addressing the allowability of earning under WIOA grants.

§ 683.200 What general fiscal and administrative rules apply to the use of Workforce Innovation and Opportunity Act title I and Wagner-Peyser funds?

This proposed section describes the application of the Uniform Guidance and the corresponding exceptions authorized by the Department at 2 CFR part 2900 for all grant recipients and subrecipients, including for-profit organizations and foreign entities. It references the cost principles, discusses when prior approval for certain expenditures is required, and highlights a number of specific requirements in the Uniform Guidance and the WIOA statute.

For example, this section addresses the requirement that interest income be disposed of using the addition method and requires an entity to provide additional program services with those funds. This section also addresses times when income is earned and how it is recognized, reported, and applied to the program. It outlines the code of conduct and conflict of interest requirements that must be implemented under 2 CFR part 200, as well as certain restrictions imposed on grant recipients and subrecipients when using WIOA and Wagner-Peyser funds, including the Buy- American provision in sec. 502 of WIOA. Likewise, this section requires adherence to the mandatory disclosure

requirements found in 2 CFR part 200 on all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

Additional disclosures on lobbying, drug-free workplace, debarment, and suspension continue to be required as well. Such disclosures must be timely and in writing. Failure to make the required disclosures can result in any of the remedies described in § 200.338, remedies for noncompliance, including suspension or debarment.

§ 683.205 What administrative cost limitations apply to Workforce Innovation and Opportunity Act title I grants?

This proposed section specifies the statutory administrative cost limitations on title I grant funds. States receiving formula WIOA funds are limited to spending no more than 5 percent of their annual allotment on administrative costs. Local areas are limited to spending no more than 10 percent of their annual allocation on administrative costs. Flexibility is provided to States and local areas in the statute by allowing administrative funds from the three formula funding streams awarded under subtitle B to be pooled and used together for administrative costs for any of the three programs, at the State and locals' discretion. For other WIOA title I and Wagner-Peyser funding, the administrative cost limits can be found in the grant agreement and are subject to the Uniform Guidance.

§ 683.210 What audit requirements apply to the use of Workforce Innovation and Opportunity Act title I and title III funds?

This proposed section specifies the audit requirements for all grant recipients and subrecipients of WIOA funds that expend more than $750,000 in Federal funds during the fiscal year, including for-profit entities that are grant recipients or subrecipients of WIOA title I or Wagner-Peyser funds. As this proposed section notes, the audit requirements do not normally pass

through to contractors, but will in some situations, such as where the payments are found to constitute a Federal award rather than a payment for goods and services. This section seeks to implement the requirements of the Uniform Guidance.

§ 683.215 What Workforce Innovation and Opportunity Act title I functions and activities constitute the costs of administration subject to the administrative cost limitation?

The proposed section defines the functions and activities that constitute administration in accordance with sec. 3(1) of WIOA, and therefore are subject to the administrative cost limitations discussed in proposed § 683.205. The Department notes that this proposed section applies to activities performed under all grants awarded under title I of WIOA. It does not apply to activities funded through contracts, such as operation of Job Corps centers. The proposed rule is the same as the WIA regulation at 20 CFR 667.220 with a few exceptions. For clarification, fiscal agent responsibilities are now included in the list of enumerated administrative costs.

Regions are also included in the list of entities that can incur administrative costs, consistent with sec. 106 of WIOA. The Department made these enhancements because services can be integrated and streamlined through regions that may cross geographical boundaries or local economic areas. Additionally, the section refers to "contractors" instead of "vendors" to be consistent with the Uniform Guidance, which replaces vendor with contractor and defines "contractor" at 2 CFR 200.23.

Proposed § 683.215(c) describes some activities that can be administrative, programmatic, or both, depending on whether the underlying functions which they support are classified as programmatic or administrative. These include costs of activities such as information systems development and operation, travel, and continuous improvement. For example, the costs of developing an information system, which serves both administrative functions, and the tracking and monitoring of participants, would be allocated between program costs and administrative costs

in proportion to the use of the system for each intended purpose.

On the other hand, preparing program-level budgets and program plans are classified as program costs. The negotiation of MOUs and one-stop infrastructure agreements, and certifications of one-stop centers are also program costs, because they build or support the one- stop delivery system and services to participants.

The Department welcomes comments regarding whether it is more advantageous to issue the proposed list of administrative costs in § 683.215(b) as a regulation, or to provide a general description of administrative costs similar to the definition in sec. 3(1) of WIOA and provide a rationale for why such an approach is advantageous. The Department also seeks comment on whether this list will need to be flexible, and subject to review and change periodically, or whether it is anticipated to be stable. Additionally, the Department seeks comment as to whether indirect costs should be included as programmatic or administrative.

Finally, proposed § 683.215(d) requires entities to make efforts to streamline administrative services and reduce administrative costs by minimizing duplication and effectively using information technology to improve services. The Department expects that streamlining the administration of the program will minimize duplication of multiple systems at different levels of grant administration so that more funds will be available for program activities.

§ 683.220 What are the internal control requirements for recipients and subrecipients of Workforce Innovation and Opportunity Act title I and Wagner-Peyser Act funds?

This proposed new section describes the internal controls that recipients and subrecipients must install and have in place when expending WIOA and Wagner-Peyser Act funds, and is based on 2 CFR 200.303. The controls include having a structure and policies in place to protect personally identifiable and sensitive information, including information that the

Department considers to be sensitive, and providing reasonable assurances that the recipient or subrecipient is managing the award in compliance with Federal law and the terms of the award, complying with Federal law and the conditions of the award, evaluating and monitoring the recipient's or subrecipient's compliance with Federal law and award terms, and taking prompt action when noncompliance is identified. The internal controls must meet the Committee of Sponsoring Organizations of the Treadway Commission (COSO) framework. The framework established has been used in the private sector for numerous years and provides standards to achieve reasonable assurance in the achievement of the following: effectiveness and efficiency of operations; reliability of financial reporting; compliance with applicable laws and regulations; and safeguarding of assets. Complying with the internal control requirements will increase accountability and transparency in the use of WIOA and Wagner-Peyser Act funds. Through past monitoring and oversight, the Department discovered that some grantees did not have the tools or access to resources to build a strong internal control structure. The Department will work with States and discretionary grantees to provide tools and assistance to achieve better results through its internal control structure. Direct grant recipients must assist their subrecipients in achieving an internal control structure framework consistent with 2 CFR part 200 and COSO.

§ 683.225 What requirements relate to the enforcement of the Military Selective Service Act?

This proposed section specifies the requirements of the Military Selective Service Act for programs and activities authorized under title I of WIOA and found in sec. 189(h) of WIOA. This proposed section is substantively the same as the WIA regulation at 20 CFR 667.250.

§ 683.230 Are there special rules that apply to veterans when income is a factor in eligibility determinations?

This proposed section addresses the laws governing the determination of eligibility for veterans and their spouses for WIOA funded services with income qualification requirements. The parameters for the exclusion of certain income from the eligibility determination process are outlined in this section. This section also states that the same method of excluding certain income of veterans must also be used when a local area imposes a priority of service threshold when funding for program services is limited.

§ 683.235 May Workforce Innovation and Opportunity Act title I funds be spent for construction?

This proposed section is different from the WIA regulations at 20 CFR 667.260. It is based on the requirements in the Uniform Guidance at 2 CFR 200.439(b)(3). The proposed text states that WIOA title I funds must not be spent on construction, purchase of facilities or buildings, or other capital expenditures for improvements to land or buildings except with prior approval of the Secretary. Under the statute, WIOA title I funds can be used for construction only in limited situations, including meeting obligations to provide physical and programmatic accessibility and reasonable accommodations, certain repairs, renovations, alterations, and capital improvements of property, and for disaster relief projects under WIOA sec. 170(d), YouthBuild programs under WIOA sec. 171(c)(2)(A)(i), and for other projects that the Secretary determines necessary to carry out WIOA, as described by under sec. 189(c) of WIOA. The proposed regulatory text is meant to include all these situations, but not offer an exclusive list to ensure that the Secretary is able to use the funds for construction in any situation where it might be necessary.

§ 683.240 What are the instructions for using real property with Federal Equity?

The proposed section provides rules on State Employment Security Agency (SESA) properties, Reed Act-funded properties, and JTPA-funded properties. The proposed section

provides guidance on these different properties because the use of these properties can play an integral part in WIOA's intent to align Federal investments to support jobs seekers and employers. Such efforts are not only achieved through strategic coordination among one-stop partners, but through physical presence at offices in the one-stop delivery system. Many buildings that have existing Federal equity currently house Wagner-Peyser programs, and it seems logical to use these facilities as American Job Centers if they are accessible and available and can support the requirements for colocation outlined in proposed §§ 678.310 through

678.320. Properties with Reed Act equity may also play a role in the American Job Center System. Lastly, the Department is aware that many local workforce development areas that were previously known as service delivery areas (SDAs) continue to be used as facilities for WIA programs, and they should continue to be used for the one-stop delivery service system under WIOA. The Department welcomes feedback on these provisions. Making use of these properties for the one-stop delivery system in accordance with statutory requirements will maximize the investments already made in these buildings and help to achieve the goals of WIOA.

With respect to Federal equity in SESA properties, the proposed section restates the requirements of sec. 192 of WIOA, and explains that Federal equity acquired in real property through grants to States awarded under title III of the SSA or the Wagner-Peyser Act is transferred to the States that used the grant to acquire the equity. The portion of the real property attributable to the Federal equity transferred must be used to carry out activities authorized under

WIOA, title III of the SSA, or the Wagner-Peyser Act. When the property is no longer needed to carry out those activities, the States are directed to request disposition instructions from the Grant Officer. Proceeds from the disposition must be used to carry out activities authorized under WIOA, title III of the SSA, or the Wagner-Peyser Act.

The statutory limitation in sec. 192(b) of WIOA is provided as well. States are not permitted to use funds awarded under WIOA, title III of the Social Security, or the Wagner- Peyser Act to amortize the costs of the real property that is purchased by any State after February 15, 2007.

The Department has also included the new requirement from sec. 121(e)(3) of WIOA and sec. 3(d) of the Wagner-Peyser Act that properties occupied by Wagner-Peyser ESs be collocated with one-stop centers.

With respect to Reed Act-funded properties, the proposed rule states that properties with Reed Act equity may be used for the one-stop delivery system to the extent that the proportionate share of Reed Act equity is less than or equal to the proportionate share of occupancy by the Wagner-Peyser and UC programs. However, subject to conditions specified in sec. 903(c)(2) of the SSA and any appropriations limitations, a State is permitted, at its discretion, to use Reed Act funds for "the administration of its UC law and public employment offices." When the property is no longer needed for these activities, the State must request disposition instructions from the Grant Officer prior to sale. Because Reed Act funded properties are different than other Federal equity properties, disposition instructions will include a requirement to return the funds attributable to the Reed Act equity to the State's account in the Unemployment Trust fund. See discussion in TEGL 3-07 "Transfer of Federal Equity in State Real Property to the States." It is expected that additional guidance will be issued to update the guidance contained in TEGL 3-07,

which will include instructions on the handling of such properties when considering colocation of Wagner-Peyser, as required in sec. 121(e)(3) of WIOA and sec. 3(d) of the Wagner-Peyser Act (as added by the amendments in title III of WIOA).

For JTPA funded properties, the proposed rule states that real property that was purchased with JTPA funds and transferred to WIA, is now transferred to the WIOA title I programs and may

be used for WIOA purposes. It is the Department's position that the Federal equity remains with the property while in use. Many properties that were purchased with JTPA funds continue to be locations that house and serve individuals and staff persons under WIA, and as such, those same buildings must continue to be used for the purposes of WIOA. If JTPA properties that were being used for WIA activities will not be used for WIOA programs, disposal of the property must occur. When the real property is no longer needed for the WIOA activities, the recipient must seek instructions from the Grant Officer prior to disposition or sale. A subrecipient would seek instructions from the State. Such instructions must be consistent with 2 CFR part 200. The Department welcomes any feedback from the workforce development system that promotes the use of these properties and streamlines the disposition process.

§ 683.245 Are employment generating activities, or similar activities, allowable under title I of the Workforce Innovation and Opportunity Act?

This proposed section implements sec. 181(e) of WIOA, which restricts the use of WIOA funds for employment generating activities except where the activities are directly related to training for eligible individuals. The proposed section states that employer outreach and job development activities are considered to be directly related to training for eligible individuals, and it lists a number of examples of acceptable activities. The section also describes the conditions in which WIOA funds can be used for employer outreach.

§ 683.250 What other activities are prohibited under title I of the Workforce Innovation and Opportunity Act?

This proposed section describes other activities that are expressly prohibited in title I of WIOA, including foreign travel paid for by WIOA formula funds (sec. 181(e) of WIOA) payment of wages of incumbent workers participating in economic development activities (sec. 181(b) of

WIOA), contracts with persons falsely labeling products as made in America (sec. 502(c) of WIOA), and others.

§ 683.255 What are the limitations related to religious activities in title I of the Workforce Innovation and Opportunity Act?

This proposed section describes the limitations related to using WIOA funds to support religious activities, including the preclusion on employment of participants for the construction, operation, or maintenance of facilities used for sectarian purposes or worship, which is contained in sec. 188(a)(3) of WIOA. This section also references 29 CFR part 2, subpart D, which describes other limitations in detail, along with certain exceptions. This proposed section contains similar requirements as the WIA regulations at 20 CFR 667.266.

§ 683.260 What prohibitions apply to the use of Workforce Innovation and Opportunity Act title I funds to encourage business relocation?

This proposed section describes the prohibitions on the use of WIOA title I funds to encourage business relocation, including specific timeframes when entities can begin working with such businesses. This section also describes the States' obligation to develop procedures to implement these rules. These provisions implement the requirements of sec 181(d) of WIOA. This proposed section contains the same requirements as the WIA regulations at 20 CFR 667.268.

§ 683.265 What procedures and sanctions apply to violations of this part?

This proposed section lists the provisions that provide for sanctions resulting from the

violation of §§ 683.235-260.

§ 683.270 What safeguards are there to ensure that participants in Workforce Innovation and Opportunity Act employment and training activities do not displace other employees?

This proposed section outlines conditions and safeguards to ensure that any WIOA title I participant does not displace an existing employee by participating in a WIOA title I program or activity. It also states that an employee can file a complaint alleging displacement. Section 181(b)(2) of WIOA did not change the WIA displacement requirements at sec. 181(b)(2) of WIA. Accordingly, this regulation is unchanged from the WIA regulation at 20 CFR 667. 270.

§ 683.275 What wage and labor standards apply to participants in activities under title I of the Workforce Innovation and Opportunity Act?

This proposed section describes the wage and labor standards that apply to WIOA title I participants, including the requirements under the Federal Fair Labor Standards Act (FLSA) and State and local minimum wage laws. The regulation is unchanged from the WIA regulations at 20 CFR 667.272, except that it includes two additional provisions from sec. 181 of WIOA. The first is that the reference to the FLSA minimum wage requirement does not apply to territorial jurisdictions in which the minimum wage requirement does not apply (WIOA sec. 181(a)(1)(B)), and the second is that WIOA title I funds must not be used to pay the wages of incumbent employees during their participation in economic development activities provided through a statewide workforce delivery system (WIOA sec. 181(b)(1)). This requirement is also found in proposed § 683.250(a)(1), but it is included here as well to give a complete list of the wage standards that apply to WIOA participants.

§ 683.280 What health and safety standards apply to the working conditions of participants in activities under title I of the Workforce Innovation and Opportunity Act?

The proposed section explains what health and safety standards and workers compensation

laws apply to WIOA title I participants. The standards in WIOA are the same as those in WIA, so the regulation is unchanged from the WIA regulation at 20 CFR 667.274.

§ 683.285 What are a recipient's obligations to ensure nondiscrimination and equal opportunity, and what are a recipient's obligations with respect to religious activities?

This proposed section describes the nondiscrimination, equal opportunity, and religious activities requirements that recipients, as defined in WIOA sec. 188 and at 29 CFR part 37, must adhere to when using WIOA title I funds. WIOA did not change these requirements, so the proposed section contains the same requirements as the WIA regulation at 20 CFR 667.275, with a few exceptions. Accordingly, paragraph (a)(1) of the proposed rule refers to "Job Corps contractors," instead of "vendors," to conform with 29 CFR part 37. Additionally, proposed

§ 683.285(a)(4) implements sec. 188(a)(4) of WIOA, which prohibits discriminating against an individual because of that person's status as a WIOA title I participant. Proposed

§ 683.285(a)(5) also implements the requirement at sec. 188(a)(5) of WIOA that participation in WIOA title I programs and activities be available to citizens and nationals of the United States, lawfully admitted permanent resident aliens, refugees, asylees, and parolees, and other immigrants authorized by the Attorney General to work in the United States. Finally, the proposed section includes the Wagner- Peyser program as an example of a Department program that is covered by 29 CFR part 2, subpart D.

§ 683.290 Are there salary and bonus restrictions in place for the use of Workforce Innovation and Opportunity Act title I and Wagner-Peyser Act funds?

This proposed section implements the requirements of sec. 194(15) of WIOA related to salary and bonus restrictions that apply to recipients or subrecipients. Although the statute applies the restrictions to WIOA title I funding, the Department expanded application to Wagner- Peyser

Act recipients and subrecipients. The appropriations acts for the last 9 years (Pub. L. 109-234 June 15, 2006) have applied the limitation to all ETA-funded programs; thus, interpreting the provision as applying to Wagner-Peyser funded activities is appropriate. Additionally, it is the Department's policy to ensure that funding is directed to substantive workforce employment and training activities to the greatest extent possible, rather than to administrative costs.

The proposed section restates the WIOA statutory provisions. Specifically, it prohibits recipients and subrecipients from paying the salary and bonuses of an individual, either as direct or indirect costs, at a rate in excess of the annual rate of basic pay prescribed for level II of the Executive Schedule under 5 U.S.C. 5313. Additionally, the limitation does not apply to contractors providing goods and services as defined in OMB's Uniform Administrative requirements (which supersedes OMB Circular A-133 cited in the statute). The Department has used the term "contractors" instead of the statutory term "vendor" to be consistent with the term used in the Uniform Guidance. The proposed rule also explains the provision at WIOA sec. 194(15)(B) that a State may establish a lower limit for salaries and bonuses.

Finally, the Department has provided direction for scenarios in which an employee may be funded by various programs or work for multiple offices. If funds awarded under title I of WIOA or the Wagner-Peyser Act pay only a portion of the employee's salary or bonus, the WIOA title I or Wagner-Peyer Act funds may only be charged for the share of the employee's salary or bonus attributable to the work performed on the WIOA title I or Wagner-Peyser Act grant. That portion cannot exceed the proportional Executive level II rate. This restriction applies to the sum of salary and bonus payments made to an individual whether they are charged as direct costs or indirect costs under title I of WIOA and Wagner-Peyer. When an individual is working for the same

recipient or subrecipient in multiple offices that are funded by title I of WIOA or the Wagner-Peyser Act, the recipient or subrecipient must ensure that the sum of the individual's salary and bonus payments does not exceed the prescribed limitation. These clarifications will help to ensure that WIOA and Wagner-Peyser Act funds are not overcharged for salary and bonus payments and that there are no "loopholes" in applying the limitation.

§ 683.295 Is earning of profit allowed under the Workforce Innovation and Opportunity Act?

This proposed section addresses earning profit under WIOA. As the network of training services and one-stop operators has changed over the years, the Department is including the proposed section to address working with for-profit entities and the earning of profit by these entities. Proposed § 683.295(a)(2) includes a requirement for grants and other Federal financial assistance awarded under secs. 121(d) and 134(b) of WIOA, which states that where a Federal financial assistance award authorizes one-stop operators, service providers, or ETPs to earn profit, the pass through entity must follow 2 CFR 200.323 to ensure that the entities' charges are reasonable and fair. The requirement in 2 CFR 200.323 that profit be negotiated as a separate element of the price will provide greater transparency as to the amount of profit earned by for- profit entities whether they are subrecipients or subcontractors. This paragraph (a)(2) describes an exception to the general rule that for-profit entities acting under a contract are allowed to earn profit. When the for-profit entity is a recipient of a grant or other Federal financial assistance,

the entities will now be covered by the Uniform Guidance rather than the Federal Acquisition Regulations. The general rule, for when for-profit entities are working as contractors, is included in proposed § 683.295(a)(3). The paragraph notes that the profit is allowable provided that the contractor abides by the requirements of 2 CFR 200.323. Proposed § 683.295(b) states that for

programs authorized by other sections of WIOA, profit will be prohibited unless authorized by the terms and conditions of the Federal award.

4. Subpart C – Reporting Requirements

This subpart provides guidance for reporting that will promote transparency and accountability at the grant recipient level. With today's demand for data in an open and transparent environment, the Federal government meets the challenges with initiatives such as the Digital Accountability and Transparency Act, requiring the Department to open access to data and use common data metrics. Performance and financial data, when made available, can lead to innovation. Not only does the Secretary seek to employ fresh and innovative approaches in serving job seekers and employers, the Department wants to utilize our resources and reporting portals to provide to the public visualizations rich in data and metrics to assist in better understanding of the employment environment. It is the Department's intent to use data collected from the financial, performance, and annual reports to empower our workforce system while providing transparency and accountability to our stakeholders. This subpart seeks to promote the government's initiative to manage information as an asset to increase operational efficiencies, reduce costs, improve services, support mission needs, safeguard personal information, and increase public access. One way to promote this initiative is through the collection and transmission of data, using machine readable formats whenever possible. To safeguard personally identifiable information, recipients and subrecipients must limit the

collection and transmission of such data and use encrypted transmission software. To increase operational efficiencies and reduce costs, the Department and its grantees work together to find solutions that allow for the streamlining of reporting and the reduction of duplication of systems and

efforts. The Department's existing financial expenditure form (ETA-9130) will be modified to reflect new reporting requirements. The Secretary will issue additional guidance on this topic.

§ 683.300 What are the reporting requirements for programs funded under the Workforce Innovation and Opportunity Act?

To continue with efforts for accountability and transparency as well as to provide data to our stakeholders, the Department requires its recipients to submit financial and performance reports, as well as an annual performance report. The data contained in these reports must be generated and processed in formats that are compatible with other commonly used data systems and be in machine readable formats. This proposed section specifies the reporting requirements for grant recipients and the deadlines for such reports. This section also sets forth recipients' responsibility to collect data from subrecipients. Pargraphs (b), (d), and (e) separately describe the performance reporting requirements for the core programs under sec. 116 of WIOA and part 677 and other grant programs authorized under title I of WIOA.

5. Subpart D – Oversight and Resolution of Findings

This proposed subpart addressees the oversight and resolution responsibilities of the Department and grant recipients of WIOA funds. Oversight and monitoring is a valuable tool in effectively managing grants and this subpart emphasizes the need for careful application of these requirements by the Department and by recipients.

Oversight. These regulations which provide for oversight and resolution responsibilities

of the Department and its grant recipients are an important part of the Department's overall

strategy to improve grant administration and to promote the vision of WIOA. As in WIA, States will review their subrecipients and validate their compliance with the Uniform Guidance on an annual basis and certify compliance to the Secretary every 2 years. The States and grant recipients must also install a monitoring system that meets the requirements of the Uniform Guidance and includes the examination of such items as performance, program goals, non- discrimination, conflict of interest, and mandatory disclosures.

Resolution. The resolution of findings that arise from audits, investigations, monitoring

reviews, and the Grant Officer resolution process is specified in this proposed subpart. It also provides clarification on the effect of the Uniform Guidance on the resolution process at the subrecipient level. When action to resolve findings is inadequate, the Department will take additional action against the State or other direct grant recipient to reach resolution. Such action will include the Grant Officer resolution process, including the initial and final determination process, as described in proposed § 683.440.

§ 683.400 What are the Federal and State monitoring and oversight responsibilities?

This proposed section identifies the requirements of the Department in performing oversight and monitoring of its grant recipients and of the Department's grant recipients' responsibility for subrecipients. Proposed § 683.400(c) describes the requirements WIOA has placed on the States to create a monitoring system for their subrecipients. Proposed paragraph

(d) also requires the retention of evidence related to monitoring functions and resolution actions. This section also covers the new requirements under the Uniform Guidance which requires an

examination of recipient and subrecipient non-discrimination and conflict of interest policies, mandatory disclosures of all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

§ 683.410 What are the oversight roles and responsibilities of recipients and subrecipients of Federal financial assistance awarded under title I of the Workforce Innovation and Opportunity Act and Wagner-Peyser?

This proposed section defines the roles and areas in which oversight must be conducted by the recipients and subrecipients, including ensuring compliance with relevant rules and developing a monitoring system. Proposed paragraph (b) of the section also discusses a number of requirements for the States' monitoring systems and the Governor's biannual certification.

The Department has always placed significant emphasis on monitoring as a tool in providing effective grants managements and this emphasis is further supported by the inclusion of monitoring in the Uniform Guidance. Monitoring and oversight also helps in identifying technical assistance needs, areas for improvement, and best practices.

§ 683.420 What procedures apply to the resolution of findings arising from audits, investigations, monitoring, and oversight reviews?

Proposed § 683.420(a) describes the steps and procedures that must be taken by grant recipients to resolve findings at the subrecipient level. For formula funds, sec. 184(a) of WIOA requires States to use the procedures they have in place for other Federal grant programs or, in the absence of such procedures, write standards for this program. Paragraph (a)(2) states that non-formula grant recipients must have written monitoring and resolutions procedures that adhere to the Uniform Guidance governing monitoring of subrecipients. All recipients must ensure that the rules governing the use of WIOA funds are being followed, including adherence to cost categories and

cost limitations. Proposed § 683.420(b) also describes the processes the Department will use to resolve findings of its direct grant recipients, and proposed paragraph (c)

describes the processes to resolve findings regarding the non-discrimination provisions in sec. 188 of WIOA.

§ 683.430 How does the Secretary resolve investigative and monitoring findings?

This proposed section describes the actions the Secretary will take to resolve findings.

This section also describes the process when the Grant Officer agrees that the recipient's actions are sufficient to resolve a finding and when they are not satisfactory. This proposed section implements the requirements of sec. 184(a)(7) of WIOA. Proposed § 683.430(b) states that audits from 2 CFR part 200 will be resolved through the Grant Officer resolution process described in proposed § 683.440.

§ 683.440 What is the Grant Officer resolution process?

This proposed section describes the Grant Officer's resolution process when dissatisfied with the actions taken by the grant recipient to resolve findings. This process involves the issuance of an Initial Determination followed by a period for informal resolution which allows the recipient to work with the Department to provide the necessary documentation or take certain action to reach a resolution. At the end of that period, the Grant Officer issues a Final Determination with findings listing any unresolved issues, establishing any debts, and listing required corrective actions, as well

as offering the opportunity for a hearing. This process is unchanged from the process under WIA.

6. Subpart E – Pay-for-Performance Contract Strategies

Introduction

WIOA's Pay-for-Performance provisions were designed to provide flexibility at the local level in an effort to infuse the system with more innovation, improve results for participants, and reward providers who deliver outstanding results. This regulatory proposal builds on the Department's experience with innovations and evidence-based work funded under the Workforce Innovation Fund and other Federally authorized activities. Moreover, the statute authorizes States to use non-Federal funds to establish incentives for Local Boards to implement WIOA Pay-for-Performance contract strategies. We encourage States to adopt evidence-based approaches and innovate in the way they deliver services to participants in order to improve outcomes, and recognize that WIOA Pay-for-Performance contracting strategies, while still experimental, are one promising method to do so.

A performance-based contract is a contracting strategy that establishes specific benchmarks that must be achieved in order for the contractor to receive payment. The WIOA Pay-for-Performance contracts are a specific form of contracting that, as authorized by WIOA, have six distinct characteristics: (1) they must provide adult training services described in sec. 134(c)(3) of WIOA or youth activities described in sec. 129(c)(2) of WIOA; (2) they must specify a fixed amount that will be paid to the service provider based on the achievement of specified levels of

performance on the performance outcomes in sec. 116(b)(2)(A) of WIOA within a defined timetable; (3) the performance outcomes achieved must be independently validated using high-quality, reliable, and verified data; (4) outcomes must be reported in accordance with sec. 116(d)(2)(K) of WIOA; (5) pursuant to sec. 3(47)(A) of WIOA, bonuses may be built into WIOA Pay-for-Performance contracts so long as such bonuses are used to expand the contractor's capacity to provide effective training; and (6) there may be an extended period of availability to expend funds under Pay-for-Performance contract strategies.

Additionally, the funds obligated for WIOA Pay-for-Performance contract strategies are limited to 10 percent of the total of the local adult and dislocated worker allotments provided under sec. 133(b) of WIOA, and 10 percent of the local youth allotment provided under sec. 128(b) of WIOA.

The WIOA Pay-for-Performance contract strategy is one of several innovative strategies WIOA adopts to place a higher emphasis on performance outcomes and provider accountability, drive better results, and incorporate rigorous evaluation and evidence-based practice into the delivery of workforce services. The Department intends to support this contracting approach by incorporating WIOA Pay-for-Performance into its WIOA performance reporting requirements for States in which local areas are adopting such a contracting approach.

The WIOA Pay-for-Performance contract strategy can benefit local areas, job seekers, and business customers when used to support interventions that have a high probability of success based on prior evidence; have measurable outcomes supported with authoritative data and strong evaluation methodologies; and are overseen by experienced managers that have flexibility to adjust their approach.

Given the heavy emphasis that WIOA Pay-For-Performance authorities place on outcome-based payment and independent validation, the quality of local area data and data

systems should be of high enough quality to be able to (1) reliably and validly establish appropriate performance benchmarks for the target population, and (2) support independent validation of actual performance outcomes.

In particular, in order for these contracting mechanisms to work effectively and efficiently, they must incorporate measures to prevent or account for potential "creaming" by service providers, and strong data systems are essential to this function. The use of outcome data from comparison groups—substantially similar populations who are not receiving services through the provider—is one potential method to minimize creaming. Another potential method

adopted by WIOA to address creaming is the use of a statistical adjustment model for (1) the establishment of performance targets, and (2) the adjustment of actual performance based on economic conditions and the characteristics of the participants. In either case, the use of valid and reliable baseline data will help to inform appropriate performance targets and that strong data systems are necessary to support this approach.

Additionally, it is important to engage in a feasibility analysis before engaging in a WIOA Pay-for-Performance contract, and that these analysis should be built into a WIOA Pay- for-Performance contract strategy. Such a feasibility analysis could include items like assessing the availability and quality of necessary data, including the source and cost of such data; determining the target population to be served; determining the availability of competent providers; whether any other additional professional services are required to support the execution of the contract; and reviewing other operational factors that would affect the feasibility of the contract.

The Department is soliciting comments on the appropriate strategies to implement different varieties of Pay for Performance contracts, including issues involving what components should be included in a Pay-for-Performance contracting strategy; what factors should be considered in a

feasibility analysis; which entities should be eligible to enter into these contracts; how different varieties of contracts should be structured; how to best establish baseline performance information for target populations served; how best to prevent or account for creaming; the best methods to account for the relative and absolute risk to government, the contractor, and other stakeholders when setting payment terms; how best to balance the total cost to government against bonus and incentive payments included in the contract and potential outcome improvements for participants; how comprehensive services can be provided in a Pay-

for-Performance contract context; and how to facilitate the participation of small service providers.

Because of the requirements contained in statute, the Department is considering how best to incorporate reporting into performance and fiscal information collection requests, which will be included in the performance and fiscal PRA packages, or whether a separate information collection is needed. We welcome comments regarding the burden of additional reporting requirements, such as specifics about local areas utilizing pay-for-performance contract strategies; the service providers, the amount of contracts, duration, and monitoring and evaluation findings. The Department expects to put performance and implementation requirements in place in the future.

§ 683.500 What is a Workforce Innovation and Opportunity Act Pay-for-Performance contract strategy?

This proposed section describes the components of a WIOA Pay-for-Performance contract strategy and describes WIOA Pay-for-Performance contract as a specific type of performance-based contract. It draws a distinction between the WIOA Pay-for-Performance contract itself and the broader goals and strategies surrounding it, which are the contracting strategy.

Local area WIOA Pay-for-Performance contract strategies must include: (1) identification of

the problem space and target populations for which a local area will pursue a WIOA Pay-for-Performance contract; (2) the outcomes the local area would hope to achieve through a Pay-for-Performance contract relative to baseline performance; (3) the acceptable cost associated with implementing such a strategy; (4) a feasibility study to determine whether the service delivery strategy to be funded is suitable for a WIOA Pay-for-Performance contracting

strategy; (5) independent validation of the performance outcomes achieved under each contract within the strategy prior to payment occurring; and (6) a description of how the local area will reallocate funds to other activities under the contract strategy in the event a service provider does not achieve performance benchmarks under a WIOA Pay-for-Performance contract.

The Department will issue additional guidance to both State and local areas on the development of the broader Pay-for-Performance contract strategy, including the scope and minimum requirements of the required feasibility study.

§ 683.510 What is a Workforce Innovation and Opportunity Act Pay-for-Performance contract?

This proposed section defines the requirements associated with a WIOA Pay-for-Performance contract, which would be awarded under a WIOA Pay-for-Performance contract strategy.

Paragraph (a) identifies a WIOA Pay-for-Performance contract strategy as a type of performance-based contract. A performance-based contract is a contracting mechanism that establishes specific benchmarks that must be achieved in order for the contractor to receive payment. Performance-based contracting in general is defined and discussed in subpart 37.6 of the Federal Acquisition Regulation.

Paragraph (b) articulates that WIOA Pay-for-Performance contracts can only be used when they are part of a broader WIOA Pay-for-Performance Contract Strategy described in § 683.500.

To be consistent with past practice and with the Uniform Guidance at 2 CFR part 200, proposed paragraph (c) prohibits the use of cost-plus percentage contracts in WIOA Pay-for-Performance contracts.

The specifications in proposed paragraphs (d) through (f) regarding eligible service providers, structure of payments, target populations, and program elements are derived directly from the statute, at WIOA secs. 3(47), 129(c)(1)(D), 129(c)(2), 134(c)(3), and 134(d)(1)(iii).

Proposed paragraph (e) specifically requires that the performance elements that must be included in any WIOA Pay-for-Performance contract are the primary indicators of performance described in sec. 116(b)(2)(A) of WIOA and further defined in proposed § 677.155. These include:

i. the percentage of program participants who are in unsubsidized employment during the second quarter after exit from the program;

ii. the percentage of program participants who are in unsubsidized employment during the fourth quarter after exit from the program;

iii. the median earnings of program participants who are in unsubsidized employment during the second quarter after exit from the program;

iv. the percentage of program participants who obtain a recognized post-secondary credential, or a secondary school diploma or its recognized equivalent (subject to sec.

116(b)(iii) of WIOA), during participation in or within 1 year after exit from the program;

v. the percentage of program participants who, during a program year, are in an education or training program that leads to a recognized post-secondary credential or employment and who are achieving measurable skill gains toward such a credential or employment; and

vi. the indicators of effectiveness in serving employers established pursuant to sec. 116(b)(iv) of WIOA.

Proposed paragraph (h) states that under WIOA Pay-for-Performance contracts, bonus payments and/or incentive payments are authorized to be paid to the service providers who enter into the WIOA Pay-for-Performance contracts. Such bonus payments must be used to expand the contractor's capacity to provide effective training. These payments are authorized by sec. 3(47)(A) of WIOA. Incentive payments must be consistent with incentive payments for performance-based contracting as described in the Federal Acquisition Regulation. WIOA Pay- For-Performance contracts may also utilize positive and negative incentives to other forms of performance-based contracts. To be consistent with performance-based contracting and in alignment with WIOA Pay-for-Performance contract characteristics, such as recognizing high performers and providing boards with flexibility to make adjustments, incentive payments should be based on the total and relative amount of risk incurred by the service provider or contractor versus that incurred by the local area or other stakeholders.

Because the Department is responsible for reporting on local outcomes annually to Congress, as well as providing recommendations for improvements in and adjustments to WIOA Pay-for-Performance contract strategies, proposed paragraph (i) requires specific reporting by the local areas to the State regarding the performance outcomes achieved by the service providers that enter into

WIOA Pay-for-Performance contracts. Additionally, proposed paragraph (j) requires independent validation of a contractor's achievement of performance benchmarks under a WIOA Pay-for-Performance contract, as required by sec. 3(47)(B) of WIOA, and requires that this validation be based on high-quality, reliable, and verified data. The Secretary will issue guidance related to standards for independent evaluation as part of its Pay- for-Performance guidance to States and local areas.

Paragraph (k) indicates that the Secretary may issue additional guidance related to use of WIOA Pay-for-Performance contracts.

Under WIA, many Workforce Development Boards utilized elements of performance- based contracts with training providers. These contracts incorporated performance outcomes that contractors were required to meet to obtain payment. However, these contracts did not contain required elements of a WIOA Pay-for-Performance contract articulated in this section. The Department encourages local areas to refocus these traditional performance-based contracts to place an emphasis on the contractor achieving outcomes like participants obtaining and retaining good jobs, rather than outputs like the number of people served. Also, the provision for the inclusion of bonus payments is limited to WIOA Pay-For-Performance contracts. Contracts that are not executed under the WIOA Pay-For-Performance contracting authority may continue to include performance incentives, either positive or negative or both, in compliance with the Federal Acquisition Regulation. Workforce Development Boards may continue to use performance-based contracts that are not WIOA Pay-for-Performance contracts. The 10 percent limitation provisions in secs. 129(c)(1)(D) and 134(d)(1)(A)(iii) of WIOA only apply to WIOA Pay-for-Performance contract strategies, including WIOA Pay-for-Performance contracts.

§ 683.520 What funds can be used for Workforce Innovation and Opportunity Act Pay-for-Performance contract strategies?

This proposed section restates the WIOA requirements that funds allocated under secs.

133(b)(2) and (3) of WIOA can be used for WIOA Pay-for-Performance contract strategies providing adults and dislocated worker training, and funds allocated under sec. 128(b) of WIOA can be used for WIOA Pay-for-Performance contract strategies providing youth activities. No more than 10 percent of the total local adult and dislocated worker allotments can be expended on the implementation of WIOA Pay-for-Performance contract strategies for adult training services described in sec. 134(c)(3) of WIOA. No more than 10 percent of the local youth

allotment can be expended on the implementation of WIOA Pay-for-Performance contract strategies for youth training services and other activities described in secs. 129(c)(1) and (c)(2) of WIOA. There is no limit on the use of funds for typical performance-based contracts, as defined in the Federal Acquisition Regulation. The 10 percent limits apply only to those performance-based contracts that are WIOA Pay-for-Performance contract strategies as defined above.

§ 683.530 How long are funds used for Workforce Innovation and Opportunity Act Pay-for-Performance contract strategies available?

Section 189(g)(2)(D) of WIOA specifies that funds used for WIOA Pay-for-Performance contract strategies are available until expended. This allows local areas to structure contracts that include time-intensive service delivery strategies and/or that structure payments based on outcomes that may take longer to achieve, measure, and validate than the typical 2-year funding availability of local area funds. Funds that are obligated but not expended due to contractor not achieving the levels of performance specified in a WIOA Pay-for-Performance contract may be reallocated for further activities related to WIOA Pay-for-Performance contract strategies only. This also allows the local area to realize one of the benefits of performance-based contracting strategies – the local area does

not pay a financial penalty for contracted services that do not achieve the stated outcomes. This provision gives the local area the discretion to choose whether to use the funds for these strategies, and if the local area so chooses, the funds will remain available until expended. This will require new grant management practices for local areas that choose to carry out WIOA Pay-for-Performance strategies. The Department will issue guidance to explain these new practices and we welcome comments with suggestions on how to maximize the use of these contract strategies and the expanded availability of the funds.

§ 683.540 What is the State's role in assisting local areas in using Workforce Innovation and Opportunity Act Pay-for- Performance contract strategies?

This proposed section describes both allowable and required State activities related to WIOA Pay-for-Performance contract strategies. The section indicates that States may provide technical assistance to local areas, including assistance with structuring WIOA Pay-for- Performance contracting strategies, performance data collection, meeting performance data entry requirements, and identifying levels of performance. This technical assistance can help local areas move forward in using this contracting strategy. Additionally, the State may either conduct evaluations of such strategies and/or provide technical assistance to locals regarding the importance of evaluation of Pay-for-Performance contract strategies. The State and local areas may conduct their own evaluations of the WIOA Pay-for-Performance contracts, or procure an independent evaluator. The Department welcomes comments regarding use of independent evaluators and whether the cost of such evaluations is feasible within the amount of funds available to local areas for pay-for-performance contracts. The Department also seeks comments on how the Department might facilitate local areas' ability to conduct evaluations. Further, sec. 116(h) of WIOA authorizes States to use non-Federal funds to incentivize use of WIOA Pay-for- Performance contract strategies for the delivery of training services or youth activities by Local Boards.

This section also identifies required activities States must undertake if a local area implements at WIOA Pay-for-Performance contract strategy. Because of the unique reporting requirements in sec. 116(d)(2)(K) for WIOA Pay-for-Performance contracts, the performance section of this proposed rule, as well as the forthcoming Information Collection Request package, will clearly articulate the State's responsibility to track and report data on the primary

indicators of performance as well as the State and local evaluations of the design of the programs and performance of WIOA Pay-for-Performance contract strategies and, where possible, the level of satisfaction with the strategies among employers and participants benefitting from the strategies.

The State must also monitor local areas' use of WIOA Pay-for-Performance contracts to ensure compliance with the following: the required elements listed in § 683.500, the contract specifications in § 683.510, State procurement policies, the 10 percent limitations, and achievement of performance benchmarks.

7. Subpart F – Grievance Procedures, Complaints, and State Appeals Processes

This subpart provides regulations governing the grievance, complaint, and appeals procedures that apply at the State and local level and to discretionary grantees under WIOA, as well as appeals to the Secretary. Providing clear rules for resolving complaints and filing appeals promotes transparency and fairness, which are fundamental requirements of the workforce investment system grant process. Included are rules governing the appeals of local area non-designation, denial or termination of training provider eligibility, and appeals of formula program participants who are tested or sanctioned for the use of controlled substances. Appeals of the Governor's imposition of sanctions for substantial violations of fiscal or other substantive requirements or performance failures under WIOA title I are also addressed. Finally, this subpart

explains the process of reporting information and complaints involving criminal fraud, waste, abuse, or other criminal activity under WIOA.

§ 683.600 What local area, State and direct recipient grievance procedures must be established?

This proposed section requires local areas, States, outlying areas, and direct grant recipients of WIOA title I funds to establish and maintain a procedure for grievances and

complaints, including appeals as appropriate, and describes what the procedure much include, as required by WIOA sec. 181(c)(1). While this section of WIOA does not require outlying areas or direct grant recipients to establish such procedures, the Department has included them in this section to ensure that all participants receiving services under title I of WIOA have the same opportunity to report and receive relief from the negative actions of the WIOA funded grantees.

This proposed section also clarifies that allegations of violations of the non- discrimination provisions of WIOA are subject to the policies and procedures described in 29 CFR part 37, which is administered by the Department's Civil Rights Center, and that complaint and grievance procedures related to Job Corps are in part 686 of this title. This section retains the same requirements found at 20 CFR 667.600.

§ 683.610 What processes does the Secretary use to review grievances and complaints of title I recipients?

This proposed section describes the situations in which the Department will review allegations, and the procedures that the Secretary will use, that arise through local, State, and other direct recipient grievance procedures in accordance with WIOA sec. 184(c)(2). This section retains the same requirements found at 20 CFR 667.610.

§ 683.620 How are complaints and reports of criminal fraud and abuse addressed under the Workforce Innovation and Opportunity Act?

This proposed section provides the requirements for reporting information and complaints involving non-criminal complaints and criminal fraud, waste, abuse or other criminal activity through the Department's Incident Reporting System to the Department's Office of the Inspector General. This section retains the same requirements found at 20 CFR 667.630.

§ 683.630 What additional appeal processes or systems must a State have for the Workforce Innovation and Opportunity Act program?

This proposed section describes the processes and systems that a State must establish to hear appeals of: entities that are denied initial or subsequent designation as a local area; training service providers that are denied eligibility as providers of training services; and WIOA title I subtitle B participants who are subject to testing or sanctions for the use of controlled substances. The section restates the WIOA appeal requirements in secs. 106(b)(5) (local area non- designation), 122 (training provider eligibility denial or termination); 181(f) (participant testing and sanctioning for use of controlled substances).

§ 683.640 What procedures apply to the appeals of non-designation of local areas?

This proposed section describes the procedures that apply when a State Board denies an appeal for initial or subsequent designation of a local area made by a unit of local government or grant recipient under § 683.630(a). This section restates and implements the appeal requirements required by WIOA sec. 106(b)(5).

§ 683.650 What procedures apply to the appeals of the Governor's imposition of sanctions for

substantial violations or performance failures by a local area?

This proposed section describes the procedures that apply to appeals of the Governor's imposition of sanctions for substantial violations of fiscal or other substantive requirements of title I of WIOA or of performance failures by local areas.

8. Subpart G – Sanctions, Corrective Actions, and Waiver of Liability

While technical assistance, oversight, and monitoring are tools to ensure compliance with program and funding requirements, sanctions and corrective action plans are necessary where those tools fail. This subpart addresses sanctions and corrective actions, waiver of liability,

advance approval of contemplated corrective actions, as well as the offset and State deduction provision. Of particular note in this subpart are the procedures for allowing a waiver of liability or an offset from other funds owed to the recipient. The statutory provisions are largely unchanged from those under WIA, though the Uniform Guidance has resulted in some changes to this subpart.

§ 683.700 When can the Secretary impose sanctions and corrective actions on recipients and subrecipients of title I Workforce Innovation and Opportunity Act funds?

This proposed section describes the procedures and circumstances under which the Department will impose sanctions or take corrective actions, as described in sec. 184(b) and (e), against States, local areas, and grant recipients and subrecipients. For actions other than those under WIOA sec. 188(a), the process outlined in § 683.440 will be used before corrective actions or sanctions are taken against direct recipients. This section also gives the Grant Officer the authority to take direct action against local areas or other subrecipients, which will also be done using the process in § 683.440. This section also clarifies that the procedures described at 20 CFR part 677

will be used to impose a sanction or corrective action for a violation of sec. 116 of WIOA. This section generally implements sec. 184 of WIOA and retains the same requirements found at 20 CFR 667.700. The Department seeks comments on appropriate sanctions and corrective actions in a variety of circumstances.

§ 683.710 Who is responsible for funds provided under title I and Wagner-Peyser?

This proposed section identifies the recipient as the responsible party for title I and Wagner-Peyser funds. For local areas receiving funds, this section explains how to identify the responsible party. Where a planning region includes two separate units of local government, the CEO of each unit of local government would be the responsible party. The general rule of

recipient responsibility arises from the Uniform Guidance, while the rules pertaining to local areas come from WIOA sec. 184.

§ 683.720 What actions are required to address the failure of a local area to comply with the applicable uniform administrative provisions?

This proposed section requires the Governor to take corrective action and impose sanctions on a local area if it fails to comply with the requirements described in the section. This section also describes the local area's appeal rights and actions the Secretary may take if the Governor fails to monitor and certify local areas' compliance or promptly take corrective action to bring the local area into compliance. The requirements in this section are taken from WIOA sec. 184.

§ 683.730 When can the Secretary waive the imposition of sanctions?

This proposed section permits a recipient to request a waiver of liability, and describes the factors the Grant Officer will consider when determining whether to grant the request. This provision implements sec. 184(d) of WIOA and retains the same requirements found at 20 CFR 667.720.

§ 683.740 What is the procedure to handle a recipient of title I Workforce Innovation and Opportunity Act funds' request for advance approval of contemplated corrective actions?

This proposed section describes the procedures which a recipient must use to request advance approval of corrective action from the Department. It describes the factors the Grant Officer will consider and when advance approval may be appropriate. This provision implements sec. 184(d) of WIOA and retains the same requirements found at 20 CFR 667.730.

§ 683.750 What procedure must be used for administering the offset/deduction provisions of the Workforce Innovation and Opportunity Act?

This proposed section outlines the steps that must be taken in order for the Department to consider and allow an offset or deduction of a debt, including the offset rules for direct recipients and the rule for a State making a deduction from a subrecipient's PY allocation. This section implements the requirements of WIOA sec. 184(c)(2).

9. Subpart H – Administrative Adjudication and Judicial Review

This subpart specifies those actions which may be appealed to the Department's Office of Administrative Law Judges (OALJ), and the rules of procedure and timing of decisions for OALJ hearings as well as the process for judicial review by a United States Circuit Court of Appeals. This subpart is similar to that currently in effect under WIA because the WIOA statute itself had only

minor changes to the requirements in this subpart.

*§ 683.800 What actions of the Department may be appealed to the Office of Administrative Law Judges***?**

This proposed section outlines the actions that can be appealed through an Administrative Law Judge (ALJ) under WIOA sec. 186(a), including a determination to not award financial assistance or a corrective action or sanction against a recipient or subrecipient. This section describes the appeal deadlines and the contents that an applicant is required to include in its appeal request. Paragraph (e) states that these procedures also apply when parties fail to reach resolution through the process described in § 683.840.

§ 683.810 What rules of procedure apply to hearings conducted under this subpart?

This proposed section adopts the rules of procedure for hearings conducted before the OALJ found at 29 CFR part 18, with some clarifications. This section also describes the

Secretary's subpoena authority under WIOA. Finally, this section sets forth the burdens of production and persuasion in hearings conducted under this subpart. Per paragraph (c), the grant officer has the initial burden of production, which is satisfied by the submission of an administrative file. After the grant officer submits the administrative file, the party seeking to overturn the Grant Officer's determination has the burden of persuasion. This section retains the same requirements found at 20 CFR 667.810.

§ 683.820 What authority does the Administrative Law Judge have in ordering relief as an outcome of an administrative hearing?

This section, which applies to all discretionary grants issued under subpart D of title I of

WIOA, specifies the remedies that an ALJ may award. Paragraph (a) applies to cases other than grant selection cases and is unchanged from the WIA regulation.

Paragraph (b) specifies the remedies for grant selection cases, and is largely drawn from the Senior Community Service Employment Program remedies provision found at 20 CFR

641.470. This section gives the Grant Officer discretion to ensure that project beneficiaries (i.e., an entity awarded financial assistance) will not be unduly negatively impacted by the implementation of remedies resulting from a grant selection appeal.

Proposed paragraphs (b)(1) and (2) state that upon receipt of an ALJ finding the application review process must be corrected or that an appealing entity should have been awarded funding, the Grant Officer will be required to take certain steps to determine whether the funding must be awarded to that entity. In determining whether the funds will be awarded to the appealing entity, the Grant Officer must take into account whether such a move would be in the interest of project beneficiaries and whether it would cause undue disruption to the participants and the program. In the event the Grant Officer determines that the appealing entity

will not receive the funds, entities without an approved Negotiated Indirect Cost Rate Agreement (NICRA) will receive reasonable application preparation costs (under 2 CFR 200.460, for entities with an approved NICRA, application preparation costs may be included in their indirect cost pool and therefore are recouped from their indirect costs to other Federal grant awards). In the event that the Grant Officer determines that the appealing entity will receive the funds, that entity will only receive funds that have not yet been obligated by the current grantee.

Finally, the Grant Officer will provide notification to the current grantee within 10 days of its decision, and that the current grantee may appeal the Grant Officer's determination using the appeal procedures described in 20 CFR 683.800.

§ 683.830 When will the Administrative Law Judge issue a decision?

This section describes the timeframe in which an ALJ must make a decision to avoid any unnecessary delays. It also describes the parties' appeal rights, as stated in WIOA sec. 186(b).

§ 683.840 Is there an alternative dispute resolution process that may be used in place of an Office of Administrative Law Judges hearing?

This section describes the available alternative an entity may use to seek resolution other than a hearing process. The outcome of this process is considered the equivalent of the final decision of an ALJ. The purpose of this provision is to offer entities a less formal, less burdensome, and more interactive appeal process.

§ 683.850 Is there judicial review of a final order of the Secretary issued under the Workforce Innovation and Opportunity Act?

This section outlines the steps a party to a final order must take to obtain judicial review in a United States Circuit Court of Appeals of any decision made by the Secretary under WIOA sec. 184 or 186, as well as the deadlines for seeking review. This provision summarizes the requirements of WIOA sec. 187.

G. Part 684 – Indian and Native American Programs Under Title I of the Workforce Innovation and Opportunity Act

1. Introduction

Because sec. 166 of WIOA retains many of the requirements of sec. 166 of WIA, the Department has drawn on the WIA regulations, found at 20 CFR part 668, in drafting the regulations for sec. 166 of WIOA. Consequently, many of the sections in this part retain the requirements found in their parallel sections of the WIA regulations. This preamble details the Department's reasons for changing any of the previous requirements under the WIA regulations on a paragraph by paragraph basis. However, some changes to the requirements under the WIA regulations affect so many paragraphs that they are noted in the introduction to the preamble instead of noting them every time that they occur.

First, proposed part 684 seeks to streamline the competitive process for awarding the Indian and Native American (INA) program grants. Section 166 of WIOA is unusual in that it requires both that grants be awarded through a competitive process and that grantees submit a 4- year plan (WIOA secs. 166(c) and 166(e)). Under the WIA regulations, the competition was separate from the plan. These WIOA regulations propose to streamline the grant award process to ease the administrative redundancy inherent in the WIA regulations. The Department will no longer designate grantees or require a notice of intent. Moreover, the proposed WIOA regulations have incorporated the 4-year plan into the competitive grant award process. The Department anticipates that these changes will help streamline the process for awarding grants.

These proposed changes should result in less of an administrative burden on both applicants and the Department.

Additionally, although WIA had a 2-year grant cycle for grantees under sec. 166, WIOA has established a 4-year grant cycle (WIOA secs. 166(c) and 166(e)). Consequently, all references to the grant cycle or plan in the proposed WIOA regulations refer to a 4-year cycle or 4-year plan.

Finally, to ensure that the terms used to discuss the populations and entities that will be

served, as described in sec. 166(d) of WIOA, are consistent throughout the proposed regulation, the Department proposes to define the term "INA" to mean American Indian, Native American, Alaska Native, and Native Hawaiian in proposed § 684.130. This term provides an efficient way to ensure inclusivity and consistency in this part.

2. Subpart A – Purposes and Policies

§ 684.100 What is the purpose of the programs established to serve Indians and Native Americans under the Workforce Innovation and Opportunity Act?

Proposed § 684.100 describes the purpose of WIOA for the INA programs authorized by WIOA sec. 166.

Proposed § 684.100(a) retains the same requirements found in the WIA regulations at 20 CFR 684.100(a) except that § 684.100(a)(2) includes entrepreneurial skills as part of the purpose of the program in order to implement and carry out the entrepreneurial skills requirement in sec. 166(a)(1)(B) of WIOA.

Proposed § 684.100(b) describes the principle means of accomplishing the purpose described in § 684.100. Because the Department has determined that no substantial changes were necessary to implement WIOA, the proposed regulation retains the same requirements

found in the WIA regulations at 20 CFR 668.100(b) with the exception that it references the principles of the Indian Self-Determination and Education Assistance Act (ISDEAA). This reference to the principles of the ISDEAA directly aligns with sec. 166(a)(2) of WIOA.

§ 684.110 How must Indian and Native American programs be administered?

Proposed § 684.110(a) describes how the Department will administer the INA program. Because no changes were necessary to this section to implement WIOA, this proposed section retains the same requirements as the WIA regulations at 20 CFR 668.120.

Proposed § 684.110(b) states that the Department will follow the Congressional declaration of policy set forth in the Indian Self-Determination and Education Assistance Act (ISDEAA), at 25 U.S.C. 450a, as well as the Department of Labor's American Indian and Alaska Native policies in administering these programs. These policies include DOL's "American Indian and Alaska Native Policy," dated July 29, 1998 and the "Tribal Consultation Policy" published in the Federal Register on December 4, 2012 (77 FR 71833). This is consistent with WIOA because WIOA sec. 166(a)(2) incorporates the principles of the ISDEAA and the other two policies are important works of guidance on consultation and coordination with INA parties.

Proposed § 684.110(c) and (d) describe the trust responsibilities of the Federal government and the designation of the Division of Indian and Native American Programs (DINAP) within ETA. Because the Department has determined that no changes were necessary to these regulations to implement WIOA, these proposed regulations retain the same requirements at 20 CFR 668.120(c) and (d).

Proposed § 668.120(e) describes the establishment of administrative procedures of the INA programs. 20 CFR 668.120(e) required that the Department utilize staff with a particular competence in this field for administration of the program. Although the Department is still

committed to the utilization of competent staff, the proposed regulation does not retain this requirement as this language was not included in WIOA. The rest of the proposed regulation retains the same requirements at 20 CFR 668.120(e) because the Department has determined that no changes

were necessary to implement WIOA.

§ 684.120 What obligation does the Department have to consult with the Indian and Native American grantee community in developing rules, regulations, and standards of accountability for Indian and Native American programs?

Proposed § 684.120 describes the obligation the Department has in consulting with the INA grantee community in developing rules, regulations, and standards of accountability for INA programs. This proposed section retains the same requirements found in the WIA regulations at 20 CFR 668.130, except that it adds new language referencing the Department's tribal consultation policy, which was published in the Federal Register on December 4, 2012,

and Executive Order (E.O.) 13175 of November 6, 2000, which requires Federal agencies to engage in regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications and are responsible for strengthening the government-to-government relationship between the United States and Indian tribes. Section 166(i)(2) of WIOA states that the Secretary must consult with Indian tribes, tribal organizations, Alaska Native entities, Indian-controlled organizations serving Indians, and Native Hawaiian organizations in establishing regulations to carry out WIOA sec. 166 and develop a funding distribution plan for the INA program. In addition, sec. 166(i)(4)(A) of WIOA states that the Secretary must establish a Native American Employment and Training Council to facilitate consultation and provide advice on the operation and administration of the WIOA INA programs, including the selection of the individual appointed as the head of DINAP.

While it is not specified in WIOA, by referencing the tribal consultation policy in this proposed section, the Department proposes that the consultation requirements referenced in WIOA must be coordinated with the Department's tribal consultation policy published in the Federal Register

on December 4, 2012 and E.O. 13175 of November 6, 2000. However, the Department notes that although these consultation policies must be coordinated, they are also separate. The Native American Employment and Training Council represents all of the INA grantee community but it does not necessarily serve as the primary vehicle through which the Federal government fulfills its obligation to consult with tribes.

§ 684.130 What definitions apply to terms used in the regulations in this part?

Proposed § 684.130 provides definitions to terms used in proposed part 684 that have not been defined in secs. 3 or 166 of WIOA or § 675.300 of these proposed regulations. Because the Department has determined that no changes were necessary to the definitions used in 20 CFR 668.150, we have retained those definitions as included in the WIA regulations without change. These include the definitions for the terms "DINAP," "Governing body," "Grant Officer," and "Underemployed." The Department has not retained the term "NEW" because it is not used in this proposed subpart. However, to provide additional clarity in these proposed regulations, the Department has included definitions for nine additional terms.

Alaska Native-Controlled Organization – This definition clarifies that an entity applying

for WIOA sec. 166 funds as an Alaska Native-Controlled Organization must have a governing board in which 51 percent of the members are Alaska Natives, to ensure that entities that receive WIOA sec. 166 funds as an Alaska Native-Controlled Organization are comprised of representatives from the communities they serve.

Carry-In – The Department is providing a definition of carry-in to clarify our process at

§ 684.254(d) for reallocating funds unspent at the end of a PY. This definition is consistent with current practice and the process for reallocating funds is explained in more detail in the preamble for § 684.270(d).

High-Poverty Area – A definition of "high-poverty area" has been included to reflect the inclusion of the phrase in WIOA. Section 129(a)(2) of WIOA provides a special rule for the youth program that includes the term "high-poverty area" but does not define that term. This proposed part references sec. 129 of WIOA in implementing the youth INA program. Therefore the Department proposes to provide a definition for high-poverty area in these regulations. The Department has chosen to employ the American Community Survey 5-Year Data because it is the only source data that uniformly collects the income level of individuals across all geographic service areas in the United States.

Incumbent Grantee – This term is used in several places in the regulations including the regulations that define which entities are eligible to apply for a WIOA sec. 166 grant. Therefore the Department is providing a definition to make clear which entities are considered incumbent grantees as referred to in the regulations.

INA – Throughout proposed part 684, the Department refers to American Indians, Native Americans, Alaska Natives, and Native Hawaiians. To ensure consistency and inclusiveness the

Department decided to use a single term, INA, when referencing all four groups.

Indian-Controlled Organization - This definition clarifies the qualifications for an organization to be an Indian-Controlled Organization and is intended to ensure that entities that receive WIOA sec. 166 funds as Indian-controlled entities are comprised of representatives from the communities they serve.

Native Hawaiian-Controlled Organization – This definition clarifies that an entity applying for WIOA sec. 166 funds as a Native Hawaiian-controlled organization must have a governing board in which 51 percent of the members are Native Hawaiians. The purpose is to ensure that entities that receive WIOA sec. 166 funds as a Native Hawaiian entity are comprised of representatives from the communities they serve.

Total Funds Available – This term is used in the definition of carry-in. The Department is providing a definition to clarify what is meant by total funds available as it affects the amount of carry-in a grantee may have and whether such carry-in is considered excessive. Available funds do not include carry-in funds. This definition is consistent with current practice and the process for reallocating funds is explained in more detail in the preamble for § 684.270(d).

3. Subpart B – Service Delivery Systems Applicable to Section 166 Programs

§ 684.200 What are the requirements to apply for a Workforce Innovation and Opportunity Act grant?

Proposed § 684.200(a)(1) establishes the eligibility requirements to apply for a WIOA sec. 166 grant. Because the Department has determined that no changes were necessary to this section to implement WIOA, this proposed section retains the same requirements found at the WIA regulations at 20 CFR 668.200(a)(1), except that we have required that all members of a consortium must be one of the listed entities to insure the input, authority, and autonomy of the INA entities listed in sec. 166(c) of WIOA. To be eligible, entities must also meet the requirements of § 684.200(c); § 684.200(a) just provides further detail about the legal shape eligible entities might take. For example, the application for a tribe might be submitted by the tribal government. Additionally, a non-profit might be an Indian-controlled organization.

Proposed § 684.200(a)(2) describes a $100,000 minimum funding award amount that is required in order to receive a WIOA sec. 166 grant. There is an exception for INA grantees participating in the demonstration program under Pub. L. 102-477; under this exception, if all resources to be consolidated under Pub. L.102-477 total $100,000, only $20,000 must be derived from sec. 166 funds. Under proposed § 684.200(a)(2), there is no exception to the requirement that at least $20,000 of all resources to be consolidated under Pub. L. 102-477 must be derived from WIOA sec. 166 funds. Awards for less than $20,000 do not provide sufficient funds to effectively operate an employment and training grant. Therefore, under WIOA, all sec. 166 funding awards must be equal to or greater than $20,000 in order to apply for a grant under Pub.

L. 102-477 except for incumbent Pub. L. 102-477 grantees that are receiving WIA funding as of the date of implementation of WIOA. These grantees will be grandfathered into the program because the advantage of requiring these grantees to meet the $20,000 minimum does not outweigh the advantages of allowing these grantees to continue with programs that have already been approved.

Proposed § 668.200(b) describes the types of entities that may make up a consortium. The proposed section requires that each member of a consortium meets the requirements. To ensure that all INA grantees sufficiently represent the interests of the INA community, the Department has decided to require that every member of a consortium must meet the requirements at proposed § 668.200(a).

Proposed § 684.200(b)(1) through (3) describe the requirements for entities to apply for WIOA sec. 166 funds as a consortium. Because the Department has determined that no changes were necessary to this section to implement WIOA, this proposed section retains the same requirements found at 20 CFR 668.200(b)(1) through (3).

Proposed § 684.200(c) describes the entities that are potentially eligible to receive WIOA sec. 166 funds. Because the Department has determined that no changes were necessary to this section to implement WIOA, this proposed section retains the same requirements found at 20 CFR 668.200(c).

Proposed § 684.200(d) explains that State-recognized tribal organizations will be considered to be "Indian-controlled" organizations for WIOA sec. 166 purposes, assuming they meet the definition of an Indian-controlled organization as defined at § 684.130. The proposed section also states that State-recognized tribes that do not meet this definition but are grantees under WIA will be grandfathered into WIOA as Indian-controlled organizations. State- recognized tribal organizations that meet the definition of an Indian-controlled organization can apply for a WIOA sec. 166 grant because they otherwise meet the eligibility requirements for an Indian-controlled organization, which ensures that they are comprised of representatives of the community they serve. State-recognized tribes that are grantees under WIA may be grandfathered in because allowing grantees that have successfully provided services to continue providing those services is consistent with the objectives of WIOA sec. 166.

§ 684.210 What priority for awarding grants is given to eligible organizations?

Proposed § 684.210(a) states that Federally-recognized Indian tribes, Alaska Native entities, or a consortium of such entities will have the highest priority to receive grants for those geographic service areas in which the Indian Tribe, Alaska Native entity, or a consortium of such entities has legal jurisdiction, such as an Indian reservation, Oklahoma Tribal Service Area (OTSA) or Alaska Native Village Service Area (ANVSA). The Department recognizes that Federally-recognized tribes are sovereign governments that often have reservation areas over which they have legal jurisdiction. Accordingly, consistent with current practice, it is the

Department's position that when a tribe has legal jurisdiction over a geographic service area such as an Indian reservation or OTSA, the Department will award sec. 166 grants to serve such areas to that tribe if it meets the requirements for receiving a grant.

Proposed § 684.210(b) states that if the Department decides not to make an award to an Indian tribe or Alaska Native entity that has legal jurisdiction over a service area—for example if a Federally-recognized tribe is not eligible to apply for a WIOA grant or does not have the ability to administer Federal funds—the Department will consult with that tribe or Alaska Native entity before selecting an entity to serve the tribe's legal jurisdictional area. As described in the preamble to § 684.120, consultation with tribes and Alaska Native entities about the service areas over which they have legal jurisdiction is integral to the principles of Indian self-determination. However, to ensure that the INA individuals residing in this service area receive services,

§ 684.210(b) does not require prior approval of the entity with legal jurisdiction.

Proposed § 684.210(c) clarifies that the priority described in paragraphs (a) and (b) does not apply to service areas outside the legal jurisdiction of an Indian tribe or Alaska Native entity. The Department does not believe that the same priority is warranted outside the legal jurisdiction of Indian tribes and Alaska Native entities.

§ 684.220 What is the process for applying for a Workforce Innovation and Opportunity Act grant?

Proposed § 684.220(a) describes when the competitive grant application process takes place. The process described aligns this proposed section with the requirements at secs. 166(c) and (e) of WIOA and with the streamlining of the application process, which is discussed in further detail in the introduction to this proposed part.

Proposed § 684.220(b) provides clarification on which applicants are required to submit a 4-year plan, as described at proposed § 684.710. The Department has decided to exclude entities that have been granted approval to transfer their WIOA funds pursuant to Pub. L.102-477 from this requirement because the intent of Pub. L. 102-477 is to allow Federally-recognized tribes and Alaska Native entities to combine formula-funded Federal grant funds, which are employment and training-related, into a single plan with a single budget and a single reporting system.

§ 684.230 What appeal rights are available to entities that are denied a grant award?

Proposed § 684.230 describes the appeal rights for entities that are denied a grant award in whole or in part. There is no appeal process specifically for sec. 166 grants; however, the Department proposes to follow the appeal process described at proposed §§ 683.800 and 683.840, which allow entities that are denied a grant award an opportunity to appeal the denial to the Office of the Administrative Law Judges. Because the Department has determined that no changes were necessary to this section to implement WIOA, this proposed section retains the same requirements

found at 20 CFR 668.270.

§ 684.240 Are there any other ways in which an entity may be awarded a Workforce Innovation and Opportunity Act grant?

Proposed § 684.240 describes other ways in which an entity may be granted an award under this proposed subpart if areas would otherwise go unserved.

§ 684.250 Can an Indian and Native American grantee's grant award be terminated?

Proposed § 684.250(a) states that a grant award can be terminated for cause, or due to emergency circumstances under the Secretary's authority at sec. 184(e) of WIOA. This proposed section retains substantively the same requirements found in the WIA regulations at 20 CFR 668.290(a). The Department notes that if a grant is terminated under sec. 184(e) of WIOA, the grantee must be given prompt notice and opportunity for a hearing within 30 days after the termination.

Proposed § 684.250(b) describes the circumstances under which an award may be terminated for cause. Because the Department has determined that no changes were necessary to this section to implement WIOA, this proposed section retains the same requirements found at 20 CFR 668.290(b).

§ 684.260 Does the Department have to award a grant for every part of the country?

Proposed § 684.260 states that the Department is not required to provide grant funds to every part of the country. This proposed section retains similar requirements in the WIA regulations at 20 CFR 668.294, with the exception that the Department clarified that funds not allocated to a service

area will be distributed to existing INA grantees consistent with current practice.

§ 684.270 How are Workforce Innovation and Opportunity Act funds allocated to Indian and Native American program grantees?

Proposed § 684. 270(a) through (c) describe how funds will be allocated to INA grantees.

Because the Department has determined that no substantial changes were necessary to this section to implement WIOA, this proposed section retains the same requirements found at 20 CFR 668.296.

Proposed § 684. 270(d) states that the Department may reallocate funds under certain circumstances. This language clarifies that excess carry-in will result in the funding formula being adjusted in future years to reflect the excess. Additionally, there is no exception for carry- in amounts in excess of 20 percent because these funds must be fully expended.

Proposed § 684.270(e) describes the funding resources the Department may draw on for TAT purposes. The proposed paragraph clarifies that the 1 percent of funding reserved under this section is not the only source funding for providing TAT for the INA program grantees.

This language is consistent with current practice and is intended to make clear that INA program grantees may also access resources available to other Department programs as needed.

4. Subpart C – Services to Customers

§ 684.300 Who is eligible to receive services under the Indian and Native American program?

Proposed § 684.300(a) describes who is eligible to receive services under an INA program. Because the Department has determined that no changes were necessary to this section to implement WIOA, this proposed section retains the same requirements found at 20 CFR 668.300(a), with the exception that the language in § 684.300(a)(2) references the definition of Alaska Native in sec. 166(b)(1) of WIOA.

Proposed paragraph (a)(1) leaves the definition of "Indian" to the tribes and local American Indian organizations that receive grant funds to determine, since WIOA does not define who is eligible to receive services under sec. 166, and there are different opinions on who is considered an Indian when determining eligibility for employment and training services. For instance some grantees consider members of State-recognized tribes as eligible individuals while other grantees do not. Therefore, the Department has left the decision of defining who is an Indian to tribes and organizations at the local level. However, the Department requires that a grantee's definition must at least include anyone who is a member of a Federally-recognized tribe.

Proposed § 684.300(b) and (c) describe additional eligibility requirements for participants to receive services from the INA program. Because the Department has determined that no changes were necessary to these sections to implement WIOA, these proposed sections retain the same requirements in the WIA regulations found at 20 CFR 668.300(b).

§ 684.310 What are Indian and Native American program grantee allowable activities?

Proposed § 684.310(a) describes what types of opportunities INA program grantees must

attempt to develop and provide. This section incorporates the broad objectives referenced in sec. 194(1) of WIOA.

Proposed § 684.310(b) further defines the employment and training services that are allowable under sec. 166 of WIOA. Because the Department has determined that no changes were necessary to this section to implement WIOA, this proposed section retains the same requirements found at 20 CFR 668.340(a).

Proposed § 684.310(c) references a non-exhaustive list of career services listed in WIOA. This language reflects WIOA's unified approach to the provision of services.

Proposed § 684.310(d) defines follow-up services. The Department chose to define follow-up services as including counseling and supportive services for up to 12 months after the date of exit for consistency with current practice. Unlike the follow-up services available under sec. 134 of WIOA, the follow-up services available under § 684.310 are available for up to 12 months because of the limited employment opportunities available to participants in the sec. 166 program.

Proposed § 684.310(e) references the non-exhaustive list of training services available at WIOA sec. 134(c)(3). The Department has referenced sec. 134(c)(3) because this section includes good examples of services that are allowable activities for INA program grantees.

Proposed § 684.310(f) lists examples of allowable activities specifically designed for youth. The Department references the program requirements for the WIOA youth program because these activities serve as good examples of allowable activities for INA programs targeting INA youth.

Proposed § 684.310(g) provides examples of allowable activities for job development and employment outreach. Because the Department has determined that no changes were necessary to this section to implement WIOA, this proposed section retains the same requirements found in the WIA regulations at 20 CFR 668.340(f).

Proposed § 684.310(h) describes whether services can be overlapping and/or sequential.

Because the Department has determined that no changes were necessary to this section to implement WIOA, this proposed section retains the same requirements found at 20 CFR 668.340(g).

Proposed § 684.310(i) states that services may be provided to a participant in any sequence based on the particular needs of the participant. This clarification is consistent with the description of career services in proposed § 678.425(b), which states that services are provided to individuals based on individual needs, including the seamless delivery of multiple services to individual customers. There is no required sequence of services. Section 134(c)(3)(A)(iii) of WIOA similarly clarifies that an individual is not required to receive career services prior to receiving training services.

§ 684.320 Are there any restrictions on allowable activities?

Proposed § 684.320(a) and (b) describe geographical restrictions on training activities and restrictions on OJT services. Because the Department has determined that no changes were necessary to these sections to implement WIOA, these proposed sections retain the same requirements found at 20 CFR 668.350(a) and (b).

Proposed § 684.320(c) prohibits OJT where an employer has exhibited a pattern of certain conduct. Because the Department has determined that no substantial changes were necessary to these section to implement WIOA, this proposed section retains the same requirements found at 20 CFR 668.350(c). However, to align § 684.320(c) with the language found at sec. 194(4) of WIOA, the phrase "including health benefits" has been included in

§ 684.320(c)(1), and § 684.320(c)(2) targets patterns of violation instead of single violations.

Proposed § 684.320(d) through (g) describe restrictions on the use of INA grant funds. Because the Department has determined that no changes were necessary to these sections to implement WIOA, these proposed sections retain the same requirements found at 20 CFR 668.350(d) through (g), with citations and references updated to be consistent with WIOA.

§ 684.330 What is the role of Indian and Native American grantees in the one-stop system?

Proposed § 684.330(a) describes the required collaboration between INA grantees and the one-stop system. The Department recognizes that there are areas in the U.S. where the Native American population is so sparse that it is not practical for WIOA grantees to be actively involved in the local one-stop system. Accordingly, WIOA only requires grantees to be involved in those local workforce investment areas where an INA grantee conducts field operations or provides substantial services. In these areas, the INA grantee must execute an MOU with the Local Board or, at a minimum, be able to demonstrate that it has made a good faith effort to enter into such agreement. Regardless of how sparse the Native American community is in an area, and regardless of an executed MOU, it is expected that, at a minimum, both the INA grantee and the local one-stop operator are familiar with each other's services and that information is available at each other's location, and referrals, coordination, and co-enrollment are encouraged. INA grantees will be required to provide details of their relationship with the local one-stop operators as part of the 4-year plan.

Proposed § 684.330(b) describes the minimum provisions necessary in an MOU between the INA grantee and a local one-stop delivery system. Proposed paragraph (b) lists information required under WIOA sec. 121(c) and includes additional requirements that implement current policy.

Proposed § 684.330(c) describes when an INA grantee is required to describe its efforts to negotiate a MOU. This information is necessary for determining why the INA grantee has not been able to negotiate an MOU and for alerting the Department about what steps might be taken to facilitate the negotiation of an MOU.

Proposed § 684.330(d) describes the application of the one-stop infrastructure in the context of INA programs. Proposed paragraph (d) implements the statutory requirements found at WIOA sec. 121(h)(2)(D)(iv).

§ 684.340 What policies govern payments to participants, including wages, training allowances or stipends, or direct payments for supportive services?

Proposed § 684.340(a) through (e) describe the policies that govern payments to participants. Because the Department has determined that no changes are necessary to these sections to implement WIOA, these proposed sections retain the same requirements found at 20 CFR 668.370.

§ 684.350 What will the Department do to strengthen the capacity of Indnian and Native American grantees to deliver effective services?

Proposed § 684.350 describes what the Department will do to strengthen the capacity of INA program grantees to deliver effective services. This proposed section retains the same commitment to provide necessary technical assistance and training to INA program grantees as found in the WIA regulations at 20 CFR 668.380.

5. Subpart D – Supplemental Youth Services

§ 684.400 What is the purpose of the supplemental youth services program?

Proposed § 684.400 describes the purpose of the supplemental youth services program.

Because the Department has determined that no substantial changes were necessary to this section to implement WIOA, this proposed section retains the same requirements found at 20 CFR 668.400.

§ 684.410 What entities are eligible to receive supplemental youth services funding?

Proposed § 684.410 describes the entities that are eligible to receive supplemental youth services funding. The amount of funding reserved for the supplemental program makes it impractical to fund all service areas in the United States. Therefore the Department proposes to limit funding awards to eligible entities that serve low-income youth residing on or near their respective reservations, OTSAs or ANVSAs or other legal jurisdictional areas, or to eligible organizations that are providing services on behalf of entities with legal jurisdiction.

§ 684.420 What are the planning requirements for receiving supplemental youth services funding?

Proposed § 684.420 describes the planning requirements for receiving supplemental youth services funding. Because youth funding is considered a supplement to the adult funding,

the Department envisions that the strategy for youth will not be extensive. This proposed section also aligns the planning requirements for the youth supplemental services with the streamlined application process, which is described in more detail in the introduction to this part.

Finally, the Department also recognizes that awareness of one's culture and history is

important to having a healthy self-identity and self-esteem. Therefore, the Department supports youth activities that teach INA to incorporate culture and traditional values since it is not fully explored in the public school system and because it plays a role in transitioning INA youth to become successful adults.

§ 684.430 What individuals are eligible to receive supplemental youth services?

Proposed § 684.430(a)(1) through (3) provide the eligibility requirements for individuals to receive supplemental youth services. Individuals must be low-income, except that 5 percent of individuals enrolled in a grantee's youth program during a PY need not meet the definition of low-income. Individuals included under this 5 percent exception do not need to meet any requirements other than those listed under proposed § 684.430(a)(1) and (2) because the Department recognizes that the funding amounts for the majority of INA program grantees are so small (and therefore the number of youth served are also so small) that the number of youth served under the 5 percent exception is numerically insignificant and that the effort and cost of collecting information on the additional barriers is not justified. Furthermore, the poverty level on or near Indian reservations (which are the areas to be served with youth funds) is so high that the vast majority of youth served under WIA met the low-income requirement and those that do not are only slightly over the poverty level.

Additionally, the INA youth program differs significantly from the State youth formula program in that it does not distinguish between "in-school" youth and "out-of-school" youth and there are no percentage requirements for ISY and OSY as required by the State youth formula program. The Department recognizes that given the small funding amount for the INA youth program, most INA grantees are primarily limited to operating summer employment programs for

ISY. However, the Department encourages the few grantees that receive significant amounts of youth funding to provide year-round youth programs and incorporate educational and training components in their youth program.

Proposed § 684.430(b) provides additional information about the definition of "low-income." This proposed section helps implement and carry out the definition of low-income provided in WIOA sec. 129(a)(2).

§ 684.440 How is funding for supplemental youth services determined?

Proposed § 684.440(a) specifies how funding will be allocated. Because the Department has determined that WIOA did not require any substantive changes to 20 CFR 668.440(a), we have retained the same essential requirements. Although this proposed section specifies that the Department will allocate youth funding based on the number of youth in poverty, the inclusion of the term "in poverty" merely implements current practices and does not change our requirements.

Proposed § 684.440(b) through (e) describe what data the Department will use in calculating the youth funding allocation, how the hold harmless factor described in § 684.270(c) will apply, how the reallocation provisions apply, and how supplemental youth services funds not allotted may be used. Because the Department has determined that no substantial changes were necessary to these sections to implement WIOA, these proposed sections retains the same requirements found at 20 CFR 668.350(b) through (e).

§ 684.450 How will supplemental youth services be provided?

Proposed § 684.450(a) through (c) describe how supplemental youth services will be provided. Because the Department has determined that no substantial changes were necessary to these sections to implement WIOA, these proposed sections retain the same requirements found at 20 CFR 668.450(a) through (c).

§ 684.460 What performance measures are applicable to the supplemental youth services program?

Proposed § 684.460(a) describes the performance measures and standards applicable to the supplemental youth services program. These measures and standards of performance are the same as the primary indicators discussed in proposed § 677.155. Though the indicators of performance are identified in various places throughout the WIOA proposed regulations, the indicators are the same and do not vary across the regulations. Section 166(e)(5) of WIOA specifies that performance indicators for the Native American program "shall" include the primary indicators of performance described in WIOA sec. 116(b)(2)(A). Consequently, the Department has listed the youth performance indicators at WIOA sec. 116(b)(2)(A)(ii) to implement and carry out statutory requirements.

The Department acknowledges that some of the performance indicators for youth programs are targeted to capture data related to participants who are either in their senior year of high school or are no longer a high school student (§ 684.460(a)(1) and (2)). Because of limited funding, many of the INA youth programs are summer employment programs serving younger high school students, these performance indicators might not accurately capture the success of such programs.

Proposed § 684.460(b) describes the Secretary's role in the creation of additional performance measures to the ones listed in § 684.460(a). Section 684.460 implements the statutory language in WIOA sec. 166(h)(2).

6. Subpart E – Services to Communities

§ 684.500 What services may Indian and Native American program grantees provide to or for employers?

Proposed § 684.500(a) and (b) describe other services that INA program grantees may provide to or for employers under sec. 166. Because the Department has determined that no changes were necessary to these sections to implement WIOA, these proposed sections retain the same requirements as 20 CFR 668.500.

§ 684.510 What services may Indian and Native American program grantees provide to the community at large?

Proposed § 684.510(a) and (b) describe services that INA program grantees may provide to INA communities. Because the Department has determined that no changes were necessary to these sections to implement WIOA, these proposed sections retain the same requirements at 20 CFR 668.510(a) and (b).

§ 684.520 Must Indian and Native American program grantees give preference to Indian and Native American entities in the selection of contractors or service providers?

Proposed § 684.520 discusses the requirement to give preference to Indian/Native American entities in the selection of contractors or service providers. Because the Department has determined that no changes were necessary to this section to implement WIOA, this proposed section retains the same requirements at 20 CFR 668.520.

§ 684.530 What rules govern the issuance of contracts and/or subgrants?

Proposed § 684.530 describes the rules that govern the issuance of contracts and/or subgrants. In general, INA program grantees must follow the uniform administrative requirements, cost principles, and audit requirements for Federal awards at 2 CFR part 200 subpart E published in the Federal Register on December 26, 2013, except that these rules do not

apply to OJT contract awards. This section essentially retains the same language as provided under WIA at 20 CFR 668.530, except that the references to OMB Circulars A-102, A-110 have been replaced with references to 2 CFR part 200 subpart E.

7. Subpart F – Accountability for Services and Expenditures

§ 684.600 To whom is the Indian and Native American program grantee accountable for the provision of services and the expenditure of INA funds?

Proposed § 684.600(a) and (b) describe who INA program grantees are accountable to for the provision of services and the expenditure of INA funds. Because the Department has determined that no changes were necessary to these sections to implement WIOA, these proposed sections retain the same requirements as 20 CFR 668.600.

§ 684.610 How is this accountability documented and fulfilled?

Proposed § 684.610(a) and (b) require INA program grantees to establish internal policies and procedures to ensure accountability to its governing body and describe how accountability to the Department is accomplished. Because the Department has determined that no changes were

necessary to these sections to implement WIOA, these proposed sections retain the same requirements at 20 CFR 668.610(a) and (b).

Proposed § 684.610(c) describes how accountability to the Department is documented and fulfilled. The Department proposes to require compliance with the reporting items listed in § 684.610(c) because these are the best ways to ensure accountability and they comply with our current practices.

§ 684.620 What performance measures are in place for the Indian and Native American program?

Proposed § 684.620(a) describes the performance measures that are required under WIOA for the INA program. These measures of performance are the same as the primary indicators discussed in proposed § 677.155. Though the indicators of performance are identified in various places throughout the WIOA proposed regulations, the indicators are the same and do not vary across the regulations. Section 166(e)(5) of WIOA specifies that performance indicators for the Native American program "shall" include the primary indicators of performance described in WIOA sec. 116(b)(2)(A). Proposed § 684.620(a) lists the applicable performance indicators described in WIOA sec. 116(b)(2)(A), thus implementing and carrying out the statutory requirements of sec. 166(e)(5) of WIOA.

Proposed § 684.620(b) describes the Secretary's role in the creation of additional performance measures to the ones listed in § 684.620(a). Section 684.620 implements the statutory language in WIOA sec. 166(h)(2).

§ 684.630 What are the requirements for preventing fraud and abuse?

Proposed § 684.630(a) requires INA program grantees to establish fiscal control and fund

accounting procedures. This section implements the language in WIOA sec. 184 to the INA program.

Proposed § 684.630(b) and (c) include requirements related to conflicts of interest gifts.

Because the Department has determined that no changes were necessary to these sections to implement WIOA, these proposed sections retain the same requirements at 20 CFR 668.630(b) and (c).

Proposed § 684.630(d) describes certain restrictions on selecting family members as participants. Because the Department has determined that no substantial changes were necessary to this section to implement WIOA, this proposed section retains the same requirements at 20 CFR 668.610(d), except that it clarifies our current practice of counting all INA individuals in a community to determine if the exception is met.

Proposed § 684.630(e) through (h) describe kickback, political activities, lobbying, and embezzlement restrictions that apply to this section. Because the Department has determined that no substantial changes were necessary to these sections to implement WIOA, these proposed sections retain the same requirements at 20 CFR 668.630(e) through (h) with changes to update citations.

Proposed § 684.630(i) prohibits discriminatory practices by recipients of WIOA funds. This section clarifies for the benefit of potential applicants the effect of WIOA sec. 188 on the INA programs. The language in this section also addresses a long-standing misconception among INA grantees that individuals outside of a grantee's geographic service area cannot be served without the consent of the grantee whose service area the individual resides. The Department recognizes that INA program grantees receive funding based on specified geographic boundaries such as a county,

reservation, Alaska Native village etc., and therefore we agree that grantees are not required to serve individuals outside their geographic areas since another grantee is receiving funding to serve such individuals. However, this does not mean that grantees cannot serve individuals outside their specified boundaries if they choose to do so.

§ 684.640 What grievance systems must an Indian and Native American program grantee provide?

Proposed § 684.640 requires INA program grantees establish grievance procedure. Because the Department has determined that no changes were necessary to this section to implement WIOA, this proposed section retains the same requirements at 20 CFR 668.640.

§ 684.650 Can Indian and Native American program grantees exclude segments of the eligible population?

Proposed § 684.650(a) and (b) inform INA program grantees whether they can exclude segments of the eligible population. Because the Department has determined that no changes were necessary to these sections to implement WIOA, this proposed sections retain the same requirements at 20 CFR 668.650.

8. Subpart G – Section 166 Planning/Funding Process

§ 684.700 What is the process for submitting a 4-year plan?

Proposed § 684.700 describes the process for submitting a 4-year plan, as required by sec. 166(e) of WIOA. Specific requirements for the submission of a 4-year plan will be provided in a Funding Opportunity Announcement (FOA). This section facilitates the streamlining of the

application process as is described in detail in the introduction of this part.

§ 684.710 What information must be included in the 4-year plans as part of the competitive application?

Proposed § 684.710 describes the information that must be included in the 4-year plan. The Department intends to seek economic and workforce responsive 4-year plans under WIOA. Under WIOA, the Department proposes that a plan contains only the four information requirements set out in WIOA sec. 166(e), which will leave the Department flexibility to ask for

different kinds of information in a request for additional information during the FOA process. The Department recognizes that the workforce system must be able to change and adapt to the changes required by employers who are, in turn, changing and adapting to forces in the economy and advancements in technology which require different skill sets for American workers. This new approach to planning will provide the flexibility necessary to address the current workforce needs at the time plans are written.

Proposed § 684.710(a) describes the information that must be included in the 4-year plan, required by WIOA secs. 166(e)(2) through (5).

Proposed § 684.710(b) states that the 4-year plan must include a projection of participants to be served and expenditures during a PY and any additional information requested in a FOA. Again, this section has been added under WIOA to convey that additional information will be required in the 4-year plan, as determined by current labor market trends and skills requirements, and what information must be in plans will be requested in a FOA as part of the competitive process.

Proposed § 684.710(c) requires INA program grantees receiving supplemental youth funds to provide additional information in the 4-year plan that describes a strategy for serving low-income, INA youth. The Department supports youth activities that preserve Native American culture and

values. Because the Department has determined that no changes were necessary to this section to implement WIOA, this proposed section retains the same requirements at 20 CFR 668.720(b), with the exception that it is framed to reflect the streamlined application process described in more detail in the introduction to this part.

§ 684.720 When must the 4-year plan be submitted?

Proposed § 684.720 describes when the 4-year plan must be submitted. The due date for the submission of the 4-year plan will be specified in the FOA. This approach implements and carries out the requirements of WIOA secs. 166(c) and 166(e) in the context of the streamlined application process that is described in more detail in the introduction to this part. The Department envisions that the first 4-year plan will be for PY 2016–2020 which will cover the period from July 1, 2016 through June 30, 2020.

§ 684.730 How will the Department review and approve such plans?

Proposed § 684.730 describes how the Department will review and approve 4-year plans.

The Department will make every effort to approve plans that are fully complete prior to the beginning of the first PY of the 4-year plan and funds will be obligated to grantees for that year through a grant award. After the first year of a 4 -year plan, funds will automatically be added each year for the following 3 years through a grant modification, assuming the grantee continues to be in good standing with the Department.

Incomplete plans that do not fully meet the requirements provided in the FOA will not be approved. It is possible for entities to be selected through the competitive process and also have an incomplete plan. Therefore, after competitive grant selections have been made, the DINAP office may assist INA program grantees with incomplete plans on tasks such as submitting required documents and other unresolved issues that render the 4-year plan incomplete.

However, the Department may delay funding to grantees until all issues with the 4-year plan have been resolved.

While it is unlikely that a grantee will fail to submit an acceptable 4-year plan, the Department will reallocate funds from an INA program grantee that fails to submit a 4-year plan

to other incumbent INA program grantees that have an approved 4-year plan. The Grant Officer may also delay executing a grant agreement and obligating funds to an entity selected through the competitive process until all the required documents—including the 4-year plan—are in place.

Proposed § 684.730(a) states that it is the Department's intent to approve a grantee's 4- year strategic plan before the date on which funds for the program become available. Because the Department has determined that no changes were necessary under WIOA, this section retains the same language as provided under WIA at 20 CFR 668.740(a), save for the addition of language specifically addressing the streamlined, 4-year grant application process as described in more detail in the introduction to this part.

Proposed § 684.730(b) describes the extent to which the DINAP office will assist INA program grantees in resolving any outstanding issues that may exist with the 4-year plan. Again, while the Department expects that it is unlikely that a grantee will fail to submit an acceptable 4- year plan, we need a mechanism to reallocate funds when such an event occurs in order to ensure that funds are spent providing services to eligible program participants.

Proposed § 684.730(c) notes that the Department may approve portions of a plan while disapproving others. Because the Department has determined that no changes were necessary to implement WIOA, the proposed regulation retains the same requirements found in the WIA regulations at 20 CFR 668.740(b).

Proposed § 684.730(d) references appeal rights in nonselection cases or in the case of a decision by the Department to deny or reallocate funds based on unresolved issues with the applicant's application or 4-year plan. There are no appeal rights in addition to the ones listed in the cited regulations because the Department has determined that consistency of appeal rights amongst WIOA programs is desirable.

§ 684.740 Under what circumstances can the Department or the Indian and Native American program grantee modify the terms of the grantee's plan(s)?

Proposed § 684.740(a) describes when the Department may unilaterally modify an INA program grantee's plan to add or reduce funds to the grant. Because the Department has determined that no changes were necessary to implement WIOA, the proposed regulation retains the same requirements found in the WIA regulations at 20 CFR 668.750(a).

Proposed § 684.740(b) describes when an INA program grantee may request approval to modify their plan to add, expand, delete, or diminish any service allowable under the regulations in this part. Because the Department has determined that no changes were necessary to implement WIOA, the proposed regulation retains the same requirements found in the WIA regulations at 20 CFR 668.750(b). Generally, it is the Department's intent to pursue grant modifications only when there are significant increases or decreases in the grantee's funding that results in significant changes in the employment and training services stated in the 4-year plan or when the grantee wishes to make a significant change in its service strategy. As a general rule, a significant change is when the

number of participants to be served in the original plan changes by 25 percent or by 25 actual participants, whichever is larger.

9. Subpart H – Administrative Requirements

§ 684.800 What systems must an Indian and Native American program grantee have in place to administer an Indian and Native American program?

Proposed § 684.800(a) and (b) describe the systems that must be in place in order for INA grantees to administer a WIOA sec. 166 grant INA program. Because the Department has determined that no changes were necessary to these sections to implement WIOA, these proposed sections retain the same requirements at 20 CFR 668.800.

§ 684.810 What types of costs are allowable expenditures under the Indian and Native American program?

Proposed § 684.810 describes where the rules relating to allowable costs under WIOA are located. Because the Department has determined that no changes were necessary to this section to implement WIOA, this proposed section retains the same requirements at 20 CFR 668.810.

§ 684.820 What rules apply to administrative costs under the Indian and Native American program?

Proposed § 684.820 describes where the definition and treatment of administrative costs can be found. Because the Department has determined that no changes were necessary to this section to implement WIOA, this proposed section retains the same requirements at 20 CFR 668.820.

§ 684.830 Does the Workforce Innovation and Opportunity Act administrative cost limit for States and local areas apply to grants?

Proposed § 684.830 informs INA program grantees about whether the WIOA administrative cost limit for States and local areas applies to INA grants. Because the Department has determined that no changes were necessary to this section to implement WIOA, this proposed section retains the same requirements at 20 CFR 668.825.

§ 684.840 How should Indian and Native American program grantees classify costs?

Proposed § 684.840 describes how INA program grantees must classify costs. Because the Department has determined that no changes were necessary to this section to implement WIOA, this proposed section retains the same requirements at 20 CFR 668.830.

§ 684.850 What cost principles apply to Indian and Native American funds?

Proposed § 684.850 requires INA program grantee to follow the cost principles at 2 CFR part 200 subpart E of the Uniform Administrative Requirements published in the Federal Register on December 26, 2013. This section retains the same language as provided under WIA

at 20 CFR 668.840, except that the references to OMB Circulars A-87, A-122, A-21 have been updated with references to 2 CFR part 200 subpart E, Cost Principles, & Audit Requirements for Federal Awards.

§ 684.860 What audit requirements apply to Indian and Native American grants?

Proposed § 684.860 requires INA program grantee to follow the audit requirements at 2 CFR 200 subpart F of the Uniform Administrative Requirements, Cost Principles, & Audit Requirements for Federal Awards published in the Federal Register on December 26, 2013. This section retains the same language as provided under WIA at 20 CFR 668.850, except that the references to OMB Circular A-133 and 29 CFR part 99 have been updated with references to 2 CFR part 200 subpart E, Cost Principles, & Audit Requirements for Federal Awards.

Additionally, § 684.860(b) implements the language at WIOA sec. 166(j) relating to single audit requirements.

§ 684.870 What is "program income" and how is it regulated in the Indian and Native American program?

Proposed § 684.870(a) through (c) provide descriptions of what qualifies as program income for work experience participants and OJT participants. Because the Department has determined that no changes were necessary to these sections to implement WIOA, these proposed sections retain the same requirements at 20 CFR 668.870(a) through (c).

10. Subpart I – Miscellaneous Program Provisions

§ 684.900 Does the Workforce Innovation and Opportunity Act provide regulatory and/or statutory waiver authority?

Proposed § 684.900 describes the regulatory and/or statutory waiver authority for the INA program. Because the Department has determined that no changes were necessary to this section to implement WIOA, this proposed section retains the same requirements at 20 CFR 668.900, except that we have clarified, in accordance with WIOA sec. 166(i)(3), that only requirements related to

title I of WIOA may be waived.

§ 684.910 What information is required in a waiver request?

Proposed § 684.910(a) describes what information an INA program grantee must include when it requests a waiver. This section implements the requirements in WIOA sec. 166(i)(3)(B) and saves INA grantees from having to reference additional departmental guidance on how to request a waiver.

Proposed § 684.910(b) states that a waiver may be requested at the beginning of a 4-year grant award cycle or anytime during a 4-year award cycle. However, all waivers expire at the end of the 4-year award cycle. The Department envisions that waivers will be requested for unique situations that were not expected in the normal course of operating an INA grant.

Therefore, Department proposes that waivers cannot be provided indefinitely and must be renewed at the beginning of a new 4-year grant cycle.

§ 684.920 What provisions of law or regulations may not be waived?

Proposed § 684.920 describes the laws and regulations that may not be waived. Because the Department has determined that no changes were necessary to this section to implement WIOA, this proposed section retains the same requirements at 20 CFR 668.920.

§ 684.930 May Indian and Native American grantees combine or consolidate their employment and training funds?

Proposed § 684.930 provides a description of when INA program grantees can consolidate

their funds under Pub. L. 102-477 (477). In addition to generally allowing the consolidation of funds as required under Pub. L. 102-477, § 684.930 describes the extent to which the Department will review 477 plans. The Department will not review the renewal of 477 plans after the initial plan has been approved by DOL, accepted by the Department of the Interior, and all other applicable Departmental programmatic and financial obligations have been met prior to transfer. This policy aligns with the requirements of Pub. L. 102-477 which allows Federally-recognized tribes and Alaska Native entities to combine formula-funded Federal grant funds, which are employment and training-related, into a single plan with a single budget and a single reporting system. The Department recognizes that when Federal funds from various agencies are combined under one unified plan, there must be one lead agency that administers and manages the unified plan. According to Pub. L. 102-477 the lead agency is the DOI.

§ 684.940 What is the role of the Native American Employment and Training Council?

Proposed § 684.940 describes the role of the Native American Employment and Training Council. The language in proposed § 684.940 repeats the requirements at WIOA sec. 166(i)(4)(C) and explains that WIOA sec. 166(4) has not made any major changes to the council.

§ 684.950 Does the Workforce Innovation and Opportunity Act provide any additional assistance to unique populations in Alaska and Hawaii?

Proposed § 684.950 address the additional assistance that WIOA provides for unique populations in Alaska and Hawaii. This proposed section implements and carries out the requirements in WIOA sec. 166(k).

H. ***Part 685 – National Farmworker Jobs Program Under Title I of the Workforce Innovation and Opportunity Act***

1. Introduction

The purpose of part 685 is to implement WIOA sec. 167, which authorizes MSFW programs. In drafting these regulations, the Department consulted with States and MSFW groups during stakeholder consultation sessions conducted in August and September 2014, as required by WIOA sec. 167(f). MSFW programs include career services and training, housing assistance, youth services, and related assistance. In drafting the proposed regulations for this part the Department seeks to encourage strategic alignment across other workforce development programs such as Wagner-Peyser and WIOA title I adult, dislocated worker, and youth programs; encourage the delivery of training for in-demand occupations; provide comprehensive youth workforce activities; and provide a detailed description of housing services available to eligible MSFWs. As required by WIOA sec. 167(e), when making grants and entering into contracts under this section, the Department will consult with the Governors and Local Boards of the States in which grantees will carry out the activities described in WIOA sec. 167(d) during the FOA process described in § 685.210.

The regulations in this section support strategic alignment across workforce development programs by: aligning the definition of "farmwork" found in this section with that used in the Wagner-Peyser program; adjusting the upper and lower age ranges of eligible MSFW youth to conform to those established in WIOA sec. 129 for OSY and ISY; and requiring that grantees coordinate services, particularly outreach to MSFWs, with the State Workforce Agency (SWA) in their service area and the State's monitor advocate. These changes are intended to support

coordination between MSFW programs and other workforce programs such as the Wagner- Peyser program, and facilitate MSFW youth co-enrollments with other WIOA title I programs.

The Department proposes language in § 685.350 regarding training services that reinforces that training must be directly linked to an in-demand industry or occupation that leads to economic self-sufficiency and encourages the attainment of recognized post-secondary credentials when appropriate.

Proposed §§ 685.330 and 685.510 establish that grantees funded under WIOA sec. 167 can serve eligible MSFW youth participants. The Department also has proposed that a percentage of the total funds appropriated each year for WIOA sec. 167 activities will be used for housing grants, and described specific housing assistance activities in § 685.360, to better articulate the types of services that can be delivered to eligible MSFWs.

2. Subpart A – Purpose and Definitions

This subpart describes the general purpose and definitions relevant to MSFW programs authorized under WIOA sec. 167, the role of the Department in providing technical assistance and training to grantees, and the regulations applicable to grantees.

§ 685.100 What is the purpose of the National Farmworker Jobs Program and the other services and activities established under Workforce Innovation and Opportunity Act?

Proposed § 685.100 identifies achieving economic self-sufficiency as the goal of the services and activities that are authorized in WIOA sec. 167 for eligible MSFWs which includes their dependents. This section emphasizes the importance of obtaining, retaining, and stabilizing the unsubsidized employment of MSFWs, including obtaining upgraded agricultural employment, in

achieving the goal of the program.

§ 685.110 What definitions apply to this program?

Proposed § 685.110 provides definitions of terms relevant to the implementation and operation of workforce investment activities authorized for MSFWs and their dependents under WIOA sec. 167.

A definition of allowances has been provided that means direct payments made to participants to support participation specific career services and training.

Dependents of eligible MSFWs may receive services under WIOA secs. 167(i)(2)(B) and 167(i)(3)(B), and the Department has provided a definition of the family member relationships of an eligible MSFW who qualify for MSFW program services.

Eligibility determination period is defined as "any consecutive 12-month period within the 24-month period immediately preceding the date of application for the MSFW program by the applicant MSFW." The definition was adopted from the first clause of WIOA sec. 167(i)(3)(A)(i), which defines "eligible seasonal farmworker."

The definition of eligible migrant farmworker is taken from WIOA sec. 167(i)(2).

The definition of eligible seasonal farmworker is taken from WIOA sec. 167(i)(3).

A definition of eligible migrant and seasonal farmworker has been provided, meaning an eligible migrant farmworker or an eligible seasonal farmworker as defined in WIOA sec. 167(i).

A definition of eligible MSFW youth has been provided, and it is defined as eligible MSFWs aged 14-24 who are individually eligible or are dependents of eligible MSFWs. The upper age range (age 24) and lower age range (age 14) for eligible MSFW youth have been put in alignment with the upper and lower age ranges provided in WIOA secs. 129 ((a)(1)(B) and (a)(1)(C). Eligible MSFW youth is a subset of eligible MSFWs as defined in this section. This alignment will facilitate co-enrollment with other WIOA youth programs that serve 14-24 year old youth participants, where appropriate.

A definition of emergency assistance had been provided that establishes that emergency assistance is a form of related assistance, and means assistance that addresses immediate needs of eligible MSFWs and their dependents, provided by grantees. To facilitate the delivery of

emergency services in a timely manner the applicant's self-certification is accepted as sufficient documentation of eligibility for emergency assistance.

A definition of family, is provided that means an eligible MSFW and all the individuals identified under the definition of dependent in this section who are living together in one physical residence. The definition has been proposed for the purpose of reporting housing assistance grantee indicators of performance as described in § 685.400.

A definition of farmwork is provided that means work while employed in the occupations described in 20 CFR 651.10. The specific occupations and industries within agricultural production and agricultural services will be provided through Departmental guidance, and will be updated when government-wide standard industry and occupation codes undergo periodic review and revision. Providing a definition of farmwork that is aligned with the Wagner-Peyser ES system will facilitate the provision of services to MSFWs under both programs.

A definition of grantee has been provided, meaning an entity to which the Department directly awards a WIOA grant to carry out programs to serve eligible MSFWs in a service area, with funds made available under WIOA sec. 167 or 127(a)(1).

A definition of housing assistance is provided and means housing-related services

provided to eligible MSFWs. Examples of specific authorized housing activities are provided in proposed § 685.360.

The definition of lower living standard income level from WIOA sec. 3(36)(B) has been referenced without change.

The definition of low-income individual from WIOA sec. 3(36)(A) has been referenced without change.

A definition of MOU has been provided, meaning "Memorandum of Understanding."

A definition of National Farmworker Jobs Program (NFJP) has been provided and is the Department-administered workforce investment program for MSFWs established by WIOA sec. 167 as a required partner of the one-stop system and includes career services, training grants, and housing grants. The term NFJP was initially developed in 1999 by the Secretary's MSFW Advisory Committee to distinguish the NFJP from the other workforce investment grants and activities funded under WIA sec. 167, such as the farmworker housing assistance grants; however, since that time the NFJP has come to be the accepted term for both employment and training grants and housing grants, and this definition reflects that understanding.

The definition of recognized post-secondary credential from WIOA sec. 3(52) has been referenced without change.

A definition of related assistance, which is authorized under WIOA sec. 167(d), has been provided meaning short-term forms of direct assistance designed to assist eligible MSFWs retain or stabilize their agricultural employment.

A definition of self-certification has been provided meaning an eligible MSFW's signed attestation that the information he/she submits to demonstrate eligibility for the NFJP is true and accurate.

A definition of service area has been provided meaning the geographical jurisdiction, which may be comprised of one or more designated States or sub-State areas, in which a WIOA sec. 167 grantee is designated to operate.

A definition of technical assistance has been provided meaning the guidance provided to grantees and grantee staff by the Department to improve the quality of the program and the delivery

of program services to eligible MSFWs. This definition was adapted from and replaces the 20 CFR part 685 definition of capacity enhancement under WIA to reflect the term more commonly used by the Department.

§ 685.120 How does the Department administer the National Farmworker Jobs Program?

Proposed § 685.120 clarifies that the Department's ETA administers NFJP activities authorized under WIOA sec. 167 for eligible MSFWs, and as described in § 685.210, the Department designates grantees in a manner consistent with standard Federal government competitive procedures.

§ 685.130 How does the Department assist grantees to serve eligible migrant and seasonal farmworkers?

Proposed § 685.130 establishes that the Department will provide guidance, administrative support, technical assistance, and training to support MSFW programs and promote employment outcomes for eligible MSFWs.

§ 685.140 What regulations apply to the programs authorized under Workforce Innovation and Opportunity Act?

Proposed § 685.140 specifies the regulations that are applicable to MSFW programs authorized under WIOA sec. 167, including proposed part 685. Applicable regulations include the general administrative requirements found in 20 CFR part 683, including the regulations regarding the Complaints, Investigations and Hearings found at 20 CFR part 683, subpart D through subpart H;

Uniform Guidance at 2 CFR part 200 and the Department's exceptions at 2 CFR part 2900 pursuant to the effective dates in 2 CFR part 200 and 2 CFR part 2900; the

regulations on partnership responsibilities contained in 20 CFR parts 679 (Statewide and Local Governance) and 678 (the one-stop system); the Department's regulations at 29 CFR part 37, which implement the nondiscrimination provisions of WIOA sec. 188.

3. Subpart B – The Service Delivery System for the National Farmworker Program

This subpart describes the service delivery system for the MSFW programs authorized by WIOA sec. 167 including who is eligible to receive grants and the role of the NFJP in the one- stop delivery system. Termination of grantee designation is explained. This subpart also discusses the appropriation of WIOA sec. 167 funds and establishes that a percentage of the total funds appropriated each year for WIOA sec. 167 activities will be used for housing assistance grants.

§ 685.200 Who is eligible to receive a National Farmworker Jobs Program grant?

Proposed § 685.200 describes the entities that are eligible to receive NFJP grants. The entity must have an understanding of the problems of eligible MSFWs, a familiarity with the agricultural industries and the labor market needs of the proposed service area, and the ability to demonstrate a capacity to administer and deliver effectively a diversified program of workforce investment activities, including youth workforce investment activities, and related assistance for eligible MSFWs.

§ 685.210 How does an eligible entity become a grantee?

Proposed § 685.210 establishes that grantees will be selected through a FOA using standard Federal government competitive procedures. The entity's proposal must describe a 4- year strategy for meeting the needs of eligible MSFWs in the proposed service area and a description of the entity's experience working with the broader workforce delivery system. This is in alignment with the requirement in WIOA sec. 167(a) that the Department make grants or

enter into contracts on a competitive basis every 4 years. Unless specified otherwise in the FOA, grantees may serve eligible MSFWs, including eligible MSFW youth, under the grant. An applicant whose application for funding as a grantee under part 685 is denied in whole or in

part may request an administrative review under 20 CFR 683.800.

§ 685.220 What is the role of the grantee in the one-stop delivery system?

Proposed § 685.220 describes that in those local workforce development areas where the grantee operates its NFJP, as described in its grant agreement, the grantee is a required one-stop partner, and is subject to the provisions relating to such partners described in 20 CFR part 678. Consistent with those provisions, the grantee and Local Workforce Development Board must develop and enter into an MOU which meets the requirements of 20 CFR 678.500 and sets forth their respective responsibilities for providing access to the full range of NFJP services through the one-stop system to eligible MSFWs.

§ 685.230 Can a grantee's designation be terminated?

Proposed § 685.230 explains the circumstance in which a grantee may be terminated by the Department for cause, including emergency circumstances when such action is necessary to protect the integrity of Federal funds or ensure the proper operation of the program, or by the Department's Grant Officer, if the recipient materially fails to comply with the terms and conditions of the award. The Department has changed the standard for Grant Officer termination from "substantial or persistent violation" as used in the WIA regulations in order to be consistent with the standards used for all other Department WIOA grants under the common administrative requirements for grants.

§ 685.240 How does the Department use funds appropriated under Workforce Innovation and Opportunity Act for the National Farmworker Jobs Program?

Proposed § 685.240 establishes that in accordance with WIOA sec. 167(h), at least 99 percent of the funds appropriated each year for WIOA sec. 167 activities must be allocated to service areas, based on the distribution of the eligible MSFW population determined under a formula which has been published in the Federal Register. The grants will be awarded under

§ 685.210. The Department has added language that clarifies that of this amount, a percentage of funds will be set aside for housing grants and will be specified in an FOA issued by the Department. The balance, up to 1 percent of the appropriated funds, will be used for discretionary purposes, such as providing technical assistance to eligible entities, and other activities prescribed by the Secretary to eligible entities. This differs from the up to 4 percent reserved in the prior regulations so as to comply with the funding requirements of WIOA sec.

167(h).

4. Subpart C – The National Farmworker Jobs Program Customers and Available

Program Services

This subpart describes the responsibilities of grantees, and workforce investment activities available to eligible MSFWs, including career services and training, housing assistance, youth services, and related assistance.

§ 685.300 What are the general responsibilities of grantees?

Proposed § 685.300 establishes the general responsibilities of grantees, including that: eligible entities receive grants through the FOA process described in § 685.210; career services and training grantees are responsible for providing appropriate career services, training, and related assistance to eligible MSFWs and eligible MSFW youth; and housing grantees are responsible for providing housing assistance to eligible MSFWs. Grantees will provide these services in accordance with the service delivery strategy described in the approved program plan

described in § 685.420. These services must reflect the needs of the MSFW population in the service area and include the services that are necessary to achieve each participant's employment goals or housing needs. Grantees also are responsible for coordinating services, particularly outreach to MSFWs, with the SWA, as defined in 20 CFR part 651, and the State's monitor advocate and fulfilling the responsibilities of one-stop partners described in proposed § 678.420.

§ 685.310 What are the basic components of an National Farmworker Jobs Program service

delivery strategy?

Proposed § 685.310 describes the basic components of the NFJP delivery strategy that must include: a customer-focused case management approach; the provision of workforce investment activities, which include career services and training, as described in WIOA secs. 167(d) and 134 and 20 CFR part 680, and youth workforce investment activities described in WIOA sec. 129 and 20 CFR part 681; the arrangements under the MOU's with the applicable Local Workforce Development Boards for the delivery of the services available through the one- stop system to MSFWs; and related assistance services.

§ 685.320 Who is eligible to receive services under the National Farmworker Jobs Program?

Proposed § 685.320 establishes that MSFWs as defined in § 685.110 are eligible for services funded by the NFJP. As provided in WIOA sec. 167(d)(1), NFJP grants are used to provide adult and youth services, thus the NFJP may use funds available to serve youth even when the service area is not being served with supplemental youth funds authorized in WIOA sec. 127(a)(1). In addition, NFJP services can be provided to eligible MSFW youth who demonstrate a need for and ability to benefit from career services. For example, some older youth may benefit more from the array of career services available under NFJP than from the youth services offered under subpart E.

§ 685.330 How are services delivered to eligible migrant and seasonal farmworkers?

Proposed § 685.330 emphasizes that services to eligible MSFWs will be focused on the customer's needs and provided through a case-management approach emphasizing customer choice, and may include appropriate career services and training, and related assistance, which

includes emergency assistance; and supportive services, which includes allowance payments. The basic services and delivery of case-management activities are further described in

§§ 685.340 through 685.390.

§ 685.340 What career services must grantees provide to eligible migrant and seasonal farmworkers?

Proposed § 685.340 establishes that eligible MSFWs must be provided the career services described in WIOA secs. 167(d) and 134(c)(2), and 20 CFR part 680. Other career services may be provided as identified in the grantee's approved program plan. The Department also has included language to clarify that while career services must be made available through the one-stop delivery system, grantees also may provide these types of services through other sources outside the one-stop system. Examples include non-profit organizations or educational institutions. The delivery of career services to eligible MSFWs by the grantee and through the one-stop system must be discussed in the required MOU between the Local Workforce Development Board and the grantee.

§ 685.350 What training services must grantees provide to eligible migrant and seasonal farmworkers?

Proposed § 685.350 establishes that the training activities in WIOA secs. 167(d) and 134(c)(3)(D), and 20 CFR part 680, must be provided to eligible MSFWs. These activities include, but are not limited to, occupational-skills training and OJT. The Department also

emphasizes that eligible MSFWs are not required to receive career services prior to receiving training services, as described in WIOA sec. 134(c)(3)(iii). This section also reinforces the intent of WIOA that training services be directly linked to an in-demand industry sector or occupation in the

service area, or in another area to which an eligible MSFW receiving such service s is willing to relocate, consistent with WIOA sec. 134(c)(3)(G)(iii). The Department also establishes that training activities must encourage the attainment of recognized post-secondary credentials as defined in § 685.110 (which refers to WIOA sec. 3(52)), when appropriate for an eligible MSFW. This requirement is in alignment with WIOA secs. 116(b)(2)(A)(i)(IV) and 116(b)(2)(A)(ii)(III), which include "the percentage of program participants who obtain a recognized post-secondary credential, or a secondary school diploma," as a primary indicator of performance for both the adult and youth programs.

§ 685.360 What housing services must grantees provide to eligible migrant and seasonal farmworkers?

Proposed § 685.360 requires that housing grantees must provide housing services to eligible MSFWs and that career services and training grantees may provide housing services to eligible MSFWs as described in their program plan. The proposed section establishes the definitions of permanent housing and temporary housing services that are available to eligible MSFWs. The Department establishes that permanent housing is owner-occupied, or occupied on a permanent, year-round basis (notwithstanding ownership) as the MSFW's primary residence to which he/she typically returns at the end of the work or training day and temporary housing is non-owner-occupied housing used by MSFWs whose employment requires occasional travel outside their normal commuting area. Permanent housing may include rental units, single family, duplexes, and other multi-family structures, dormitory, group homes, and other housing

types that provide short-term, seasonal, or year-round housing opportunities in permanent structures. Modular structures, manufactured housing, or mobile units placed on permanent foundations and supplied with appropriate utilities and other infrastructure are also considered permanent housing. Temporary housing may include: units intended for temporary occupancy located in permanent

structures, such as rental units in an apartment complex or in mobile structures, tents, and yurts that provide short-term, seasonal housing opportunities; temporary structures that may be moved from site to site, dismantled and re-erected when needed for farmworker occupancy; and off-farm housing operated independently of employer interest in, or control of, the housing, or on-farm housing operated by a nonprofit, including faith-based or community non-profit organizations, but located on property owned by an agricultural employer. Specific examples of permanent housing services and activities associated with the provision of permanent housing services, and specific examples of temporary housing activities associated with the provision of temporary housing services, including emergency assistance such as emergency housing payments, vouchers, and cash payments for rent/lease and utilities are provided. The Department establishes that housing services are intended to meet the needs of eligible MSFWs to occupy a unit of housing for reasons related to seeking employment, retaining employment, or engaging in training. The definitions of permanent housing and temporary housing assistance and the specific examples of permanent and temporary housing services described in the proposed § 685.360 are adapted from the 2011 Department *Notice of Availability of Funds and Solicitation for Grant Applications for the National Farmworker Jobs Program (NFJP) Housing Assistance Program* (Funding Opportunity Number: SGA-DFA-PY- 10-08) which provided specific requirements and guidelines for housing grant applicants.

§ 685.370 What services may grantees provide to eligible migrant and seasonal farmworker youth participants aged 14-24?

Proposed § 685.370 describes the services that grantees may provide to eligible MSFW youth participants aged 14-24 based on an evaluation and assessment of their needs. These services include the career and training services described in §§ 685.340 through 685.350; youth workforce investment activities described in WIOA sec. 129; life skills activities that encourage development of self and interpersonal skills development; community service projects; and other activities that

conform to the use of funds for youth activities described in 20 CFR part 681.

Grantees may provide these services to any eligible MSFW youth, regardless of the participant's eligibility for WIOA title I youth activities as described in WIOA sec. 129(a).

§ 685.380 What related assistance services may be provided to eligible migrant and seasonal farmworkers?

Proposed § 685.380 describes the types of services that may be provided to eligible MSFWs as "related assistance," and establishes that these services are short-term, direct services. Examples include emergency assistance, as defined in § 685.110, and those activities identified in WIOA sec. 167(d), such as English language and literacy instruction, pesticide and worker safety training, housing (including permanent housing), as described in § 685.360, and school dropout prevention and recovery activities. Related assistance is distinct from "supportive services" as defined in WIOA sec. 3, which "means services such as transportation, child care, dependent care, housing, and needs-related payments, that are necessary to enable an individual to participate in activities authorized under this Act," because related assistance may be provided to eligible MSFWs who are not otherwise participating in activities authorized under this Act such as career services, youth services, or training services.

§ 685.390 When may eligible migrant and seasonal farmworkers receive related assistance?

Proposed § 685.390 establishes that eligible MSFWs may receive related assistance services when the need for the related assistance is identified and documented by the grantee. A statement by the eligible MSFW may be included as documentation.

5. Subpart D – Performance Accountability, Planning, and Waiver Provisions

This subpart describes indicators of performance for grantees, required planning documents, and the information required in program plans required under WIOA sec. 167. The subpart also explains waiver provisions and clarifies how grant costs are classified under WIOA sec. 167.

§ 685.400 What are the indicators of performance that apply to the National Farmworker Jobs Program?

Proposed § 685.400 describes the indicators of performance that apply to grantees.

Grantees providing career services and training will use the indicators of performance common to the adult and youth programs, described in WIOA sec. 116(b)(2)(A), as required by WIOA sec. 167(c)(2)(C). These measures of performance are the same as the primary indicators discussed in proposed § 677.155. Though the indicators of performance are identified in various places throughout the WIOA proposed regulations, the indicators are the same and do not vary across the regulations.

For grantees providing career services and training, the Department will reach agreement on the levels of performance for each of the primary indicators of performance described in WIOA sec. 116(b)(2)(A), taking into account economic conditions, characteristics of the individuals served, and other appropriate factors, and using, to the extent practicable, the statistical adjustment model under WIOA sec. 116(b)(3)(A)(viii). The levels agreed to will be

the adjusted levels of performance and will be incorporated in the program plan, as required in WIOA sec. 167(c)(3). For grantees providing housing services only, grantees will use the total number of eligible MSFWs served and the total number of eligible MSFW families served as

indicators of performance. Performance indicators for NFJP housing grantees are not specified in WIA or WIOA statute, and the measures proposed here are adapted from the Department's TEGL, Number 15-13, *Program Year 2014 Planning Guidance for National Farmworker Jobs Program Housing Grantees*, released March 25, 2014. As described in proposed § 685.400(d), the Department may develop additional performance indicators with appropriate levels of performance for evaluating programs that serve eligible MSFWs and which reflect the State service area economy, local demographics of eligible MSFWs, and other appropriate factors. In accordance with § 685.400(d), the Department may develop additional indicators of performance for housing grantees in addition to the indicators specified in proposed § 685.400(c). If additional performance indicators are developed, the levels of performance for these additional indicators must be negotiated with the grantee and included in the approved program plan.

Grantees also may develop additional performance indicators and include them in the program plan or in periodic performance reports.

§ 685.410 What planning documents must a grantee submit?

Proposed § 685.410 describes the planning documents that a grantee must submit, including a comprehensive program plan, further described in proposed § 685.420, and a projection of participant services and expenditures covering the 4-year grant cycle.

§ 685.420 What information is required in the grantee program plan?

Proposed § 685.420 describes the information required for inclusion in program plans. Paragraph (a) asks for a description of the service area that the applicant proposes to serve, in

accordance with WIOA sec. 167(c). Paragraphs (b) through (g) incorporate the elements described in WIOA sec. 167(c)(2). Paragraphs (h) and (i) specify additional information required in program plans which include: the methods the grantee will use to target its services on specific segments of the eligible population, as appropriate, and the response to any other requirements set forth in the FOA issued under § 685.210.

§ 685.430 Under what circumstances are the terms of the grantee's program plan modified by the grantee or the Department?

Proposed § 685.430 describes the circumstances when the terms of the grantee's program plan can be modified by the grantee or the Department. Program plans must be modified to reflect the funding level for each year of the grant, and the Department will provide instructions annually on when to submit modifications for each year of funding, which will generally be no later than June 1, prior to the start of the subsequent year of the grant cycle. Grantees must submit a request to the Department for any proposed modifications to the plan to add, delete, expand, or reduce any part of the program plan or allowable activities, and the Department will consider the cost principles, uniform administrative requirements, and terms and conditions of award when reviewing modifications to program plans. The purpose of this requirement is to ensure that the Department has reviewed and approved any proposed programmatic changes as part of a grant award to ensure the changes are allowable, programmatically and fiscally sound, and do not negatively affect performance outcomes. If the grantee is approved for a regulatory waiver under proposed § 685.560 and § 685.570, it must submit a modification of the grant plan to reflect the effect of the waiver.

§ 685.440 How are costs classified under the National Farmworker Jobs Program?

Proposed § 685.440 describes how costs are classified under the NFJP. Costs are classified as administrative costs, as defined in 20 CFR 683.215, and program costs are all other costs not

defined as administrative. The Department further specifies that program costs must be classified and reported in the categories of related assistance (including emergency assistance), supportive services, and all other program services.

§ 685.450 What is the Workforce Innovation and Opportunity Act administrative cost limit for National Farmworker Jobs Program grants?

Proposed § 685.450 describes the administrative cost limit for NFJP grants which, under 20 CFR 683.205(b), will be identified in the grant or contract award document, and will not exceed 15 percent of total grantee funding. The administrative cost limit established in this section is consistent with the administrative cost limit under which the program is currently operating.

§ 685.460 Are there regulatory and/or statutory waiver provisions that apply to the Workforce Innovation and Opportunity Act?

Proposed § 685.460 describes the regulatory and/or statutory waiver provisions that apply to WIOA sec. 167. The statutory waiver provision at WIOA sec. 189(i) and discussed in 20 CFR 679.600 does not apply to WIOA sec. 167. Paragraph (b) establishes that grantees may request a waiver of any regulatory provisions only when such regulatory provisions are (1) not required by WIOA; (2) not related to wage and labor standards, non-displacement protection, worker rights, participation and protection of workers and participants, and eligibility of participants, grievance procedures, judicial review, nondiscrimination, allocation of funds, procedures for review and approval of plans; and (3) not related to the basic purposes of WIOA, described in 20 CFR 675.100.

§ 685.470 How can grantees request a waiver?

Proposed § 685.570 describes the information that grantees must submit to the Department

in a waiver plan to document a requested waiver. The waiver request must include: a description of the goals of the waiver; the expected programmatic outcomes and how the waiver will improve the provision of program activities; how the waiver is consistent with guidelines the Department establishes; the data that will be collected to track the impact of the waiver; and the modified program plan reflecting the effect of the requested waiver.

6. Subpart E – Supplemental Youth Workforce Investment Activity Funding Under Workforce Innovation and Opportunity Act sec. 127(a)(1)

This subpart describes the purpose of supplemental youth workforce investment activity funding that may become available under WIOA sec. 127(a)(1). Included is a description of how the funds may become available, and what requirements apply to grants funded by WIOA sec. 127(a)(1). Significantly, these funds may be used only for workforce investment activities for eligible MSFW youth, as defined in § 685.110. The Department will issue a separate FOA for grants funded by WIOA sec. 127(a)(1), and the selection will be made in accordance with the procedures described in § 685.210, giving priority to applicants that are WIOA sec. 167 grantees. Planning documents required for grants funded by WIOA sec. 127(a)(1) will be described in the FOA; and allocation of WIOA sec. 127(a)(1) funds will be based on the comparative merits of the applications in accordance with criteria set forth in the FOA.

§ 685.500 What is supplemental youth workforce investment activity funding?

Proposed § 685.500 describes that if Congress appropriates more than $925 million for

WIOA youth workforce investment activities in a fiscal year, 4 percent of the excess amount must be used to provide workforce investment activities for eligible MSFW youth under WIOA sec. 167.

§ 685.510 What requirements apply to grants funded by the Workforce Innovation and Opportunity Act?

Proposed § 685.510 specifies that the requirements in subparts A through D of § 685 apply to grants funded by WIOA sec. 127(a)(1), except that grants described in this subpart must be used only for workforce investment activities for eligible MSFW youth, as described in § 685.370 and WIOA sec. 167(d) (including related assistance and supportive services).

§ 685.520 What is the application process for obtaining a grant funded by the Workforce Innovation and Opportunity Act?

Proposed § 685.520 specifies that the Department will issue a separate FOA for grants funded by WIOA sec. 127(a)(1). The selection will be made in accordance with the procedures described in § 685.210, except that the Department reserves the right to provide priority to applicants that are WIOA sec. 167 grantees.

§ 685.530 What planning documents are required for grants funded by the Workforce Innovation and Opportunity Act?

Proposed § 685.530 specifies that planning documents required for grants funded by WIOA sec. 127(a)(1) will be described in the FOA.

§ 685.540 How are funds allocated to grants funded by the Workforce Innovation and Opportunity

Act?

Proposed § 685.540 describes that the allocation of WIOA sec. 127(a)(1) funds will be based on the comparative merits of the applications, in accordance with criteria set forth in the FOA.

§ 685.550 Who is eligible to receive services through grants funded by the Workforce Innovation and Opportunity Act?

Proposed § 685.550 describes that eligible MSFW youth as defined in § 685.110 may receive services through grants funded by WIOA sec. 127(a)(1).

I. Part 686 – The Job Corps Under Title I of the Workforce Innovation and Opportunity Act

1. Introduction

This part provides proposed regulations for the Job Corps program, authorized in title I, subtitle C of WIOA. The regulations address the scope and purpose of the Job Corps program and provide requirements relating to site selection, protection, and maintenance of Job Corps facilities; funding and selection of center operators and service providers; recruitment, eligibility, screening, selection and assignment, and enrollment of Job Corps students; Job Corps program activities and center operations; student support; career transition services and graduate services; community connections; and administrative and management requirements. The Department's intent in the regulations is to incorporate the requirements of title I, subtitle C of the Act and to describe how the Job Corps program is operated in order to deliver relevant academic and career technical training (CTT) that leads to meaningful employment or post-secondary education. The regulations also serve

to explain clearly the requirements necessitated by the unique residential environment of a Job Corps center. The major changes from the existing regulations reflect WIOA's effort to enhance the Job Corps program, provide access to high quality training and education, create incentives for strong contractor performance, and promote accountability and transparency.

2. Subpart A – Scope and Purpose

This proposed subpart contains regulatory provisions that describe the Job Corps program, its purpose, the role of its Director, and applicable definitions. In describing the role of the Job Corps Director, this subpart provides that the Secretary has delegated the authority to carry out his or her responsibilities under this part to the National Director of Job Corps; therefore, all references to the Secretary issuing guidelines, procedures or standards means that they will be issued by the National Job Corps Director. This subpart also describes the Policy and Requirements Handbook (PRH), which provides the operating policies and procedures governing day-to-day activities of the Job Corps program. The subpart describes the scope and purpose of the program, along with the responsibilities of its National Director. It promotes accountability and transparency by making readers aware of exactly what the Job Corps program plans to achieve and the procedures for doing so, as well as the role its leadership plays in its operation.

§ 686.100 What is the scope of this part?

Proposed § 686.100 contains the regulatory provisions governing the Job Corps program. It explains that procedures guiding day-to-day operations are proposed to be provided in the PRH and clarifies that throughout this part, phrases that refer to instructions or procedures issued by the Secretary refer to the PRH and other Job Corps Directives. Because this section of WIOA is so

similar to the corresponding section in WIA, this proposed section retains the same requirements found at 20 CFR 686.100.

§ 686.110 What is the Job Corps program?

Proposed § 686.110 describes the Job Corps program. Job Corps is a national program that operates in partnership with States, communities, local Workforce Development Boards,

youth councils, one-stop centers and partners, and other youth programs to provide social, academic, career and technical education, and service-learning opportunities, primarily in a residential setting, for low-income young people. Proposed § 686.110 reflects the increased focus in sec. 141 of WIOA on connecting young people to the labor force by providing them with intensive social, academic, career and technical education in order to obtain secondary school diplomas or recognized credentials leading to successful careers in in-demand industries or occupations, the Armed Forces, or enrollment in post-secondary education. The program's goals for students are economic self-sufficiency, opportunities for advancement, and responsible citizenship.

§ 686.120 What definitions apply to this part?

The definitions that are listed in this section are specific to this proposed part, which governs the Job Corps program. Other definitions that apply to the Job Corps program are defined under secs. 3 and 142 of WIOA. Proposed § 686.120 describes definitions in four categories.

The first category is made up of proposed definitions that are the same as those included in the regulations at 20 CFR 686.120 that governed the Job Corps program under WIA. These are "Absent Without Official Leave (AWOL)," "Capital improvement," "Contract center," "Enrollee,"

"Enrollment," "Individual with a disability," "Interagency agreement," "Job Corps Director," "National Office," "Placement," "Regional appeal board," "Regional Director," "Regional Office," "Regional Solicitor," "Separation," "Student," and "Unauthorized goods." Because these definitions are the same as those in the WIA regulations, the Department has not included further explanation of them below.

The second category is made up of proposed definitions that are similar to definitions included in the WIA regulations at 20 CFR 670.120, but they have been modified slightly due to differences in the definitions contained in WIOA. These are "Applicable Local Board," "Civilian Conservation Center (CCC), "Contracting Officer," "Graduate," "Job Corps," "Job Corps center," "Low-income individual," "National training contractor," "Operational support services," "Operator," and "Outreach and admissions provider."

The third category is made up of proposed definitions that were not included in the WIA regulations, but they are defined in sec. 142 of WIOA. These are "Applicable one-stop center," "Former Enrollee," and "Service Provider."

The fourth category is made up of proposed definitions that apply to the Job Corps program and are commonly used in these regulations, but do not appear in the WIA regulations or in WIOA. These are "Career Technical Training," "Career Transition Service Provider," and "Participant."

Aside from the terms in the first category, the definitions are explained as the terms appear in this proposed section in alphabetical order, as follows:

Applicable Local Board - The proposed definition of this term implements the definition

of "applicable Local Board" contained in sec. 142 of WIOA. It is similar to the definition of

"Workforce Investment Board" in the WIA regulations.

Applicable one-stop center - The proposed definition of this term implements the definition contained in sec. 142 of WIOA.

Career Technical Training - The proposed definition of this term means career and technical education and training, which is the term most often used by WIOA rather than "vocational training," as used in WIA.

Career Transition Service Provider - The proposed definition of this term means an organization acting under a contract or other agreement with Job Corps to provide career transition services for graduates and, to the extent possible, for former students. WIOA uses both the term "Career Transition Service Provider" and "Placement Provider" interchangeably. Career transition services are further explained in subpart G of the proposed rule.

Contracting officer - The proposed definition of this term is similar to the definition of "contracting officer" in the WIA regulations, but it does not include "Regional Director," because contracting officers are most often not Regional Directors.

Former Enrollee - The proposed definition of this term implements the definition

contained in sec. 142 of WIOA.

Graduate - The proposed definition of this term implements the definition contained in sec. 142 of WIOA.

Job Corps - The proposed definition of this term is similar to the definition of "Job Corps" in the WIA regulations, but it clarifies that the Job Corps is established within the Department and cites the applicable section of WIOA.

Job Corps center - The proposed definition of this term is the same as the definition in the WIA regulations, except that this definition cites the applicable section of WIOA.

Low-income individual - The proposed definition of this term is the same as the definition in the WIA regulations, except that this definition cites the applicable section of WIOA.

National training contractor - The proposed definition of this term is slightly different

from the definition in the WIA regulations, because the term "career and technical training" is used rather than "vocational training." However, the meaning remains unchanged.

Operational support services - The proposed definition of this term is slightly different

from the definition in the WIA regulations, because the term "career and technical training" is used instead of "vocational training." However, the meaning remains unchanged.

Operator - The proposed definition of this term implements the definition of "operator"

contained in sec. 142 of WIOA. It is similar to the definition of "center operator" in the WIA regulations.

Outreach and admissions provider - The proposed definition of this term is similar to the

definition of "outreach and admissions agency" in the WIA regulations, but it clarifies that the entity performs recruitment in addition to outreach and enrollment activities, consistent with the definition in sec. 142 of WIOA.

Participant – The proposed definition of this term clarifies which individuals are

considered participants for performance reporting purposes under proposed § 686.1010. The definition of participant includes graduates and those enrollees and former enrollees who have

completed the career preparation period. It also includes enrollees and former enrollees who have remained in the program for 60 days or more, regardless of whether they have completed their career preparation period. During the career preparation period, the student learns, demonstrates, and practices personal responsibility and skills required in the workplace; learns, demonstrates, and practices job search skills; visits and learns about one-stop centers; and creates a personal career development plan with the help of staff. In most cases, the career preparation period culminates with the commitment to the Personal Career Development Plan. The Department proposes this limitation because students are not assigned to trades and are not generally receiving the services described subpart E of this part until the career preparation

period is completed. The career preparation period is described in Job Corps' Policy and Requirements Handbook.

Service Provider - The proposed definition of this term implements the definition

contained in sec. 142 of WIOA.

§ 686.130 What is the role of the Job Corps Director?

Proposed § 686.130 describes the role of the Job Corps Director, noting that he/she has been delegated authority to carry out the responsibility of the Secretary under title I, subtitle C of WIOA related to the operation of the Job Corps program. Proposed § 686.130 also clarifies that references in this part referring to "guidelines" or "procedures issued by the Secretary" mean that the Job Corps Director issues such guidelines. This proposed section retains the same requirements as those found

at 20 CFR 686.130.

3. Subpart B – Site Selection and Protection and Maintenance of Facilities

This proposed subpart describes how sites for Job Corps centers are selected, the handling of capital improvements and new construction on Job Corps centers, and responsibilities for facility protection and maintenance. The requirements in this subpart are not significantly different from the corresponding requirements in the WIA Job Corps regulations at 20 CFR part 686 subpart B. The Secretary, through delegation of authority to the National Director of Job Corps, must approve the location and size of all Job Corps centers, and establish procedures for requesting, approving, and initiating capital improvement and new construction on Job Corps centers, which serves to strengthen and enhance the program as a whole.

§ 686.200 How are Job Corps center locations and sizes determined?

Proposed § 686.200 explains that the Secretary must approve the location and size of all Job Corps centers, including both contract centers and CCCs. The Secretary also establishes procedures for making decisions concerning the establishment, relocation, expansion, or closing of contract centers.

§ 686.210 How are center facilities improvements and new construction handled?

Proposed § 686.210 states that the Secretary establishes procedures for requesting, approving, and initiating capital improvements and new construction on Job Corps centers.

§ 686.220 Who is responsible for the protection and maintenance of center facilities?

Proposed § 686.220 states that the Secretary establishes procedures for the protection and maintenance of contract center facilities owned or leased by the Department. The proposed section also states that when the Department of Agriculture operates CCCs on public land, it will be responsible for the protection and maintenance of CCC facilities. The Secretary issues procedures for conducting periodic facility surveys of centers to determine their condition and to identify additional physical needs. This proposed section retains the same requirements found at 20 CFR 670.220.

4. Subpart C – Funding and Selection of Center Operators and Service Providers

In this proposed subpart the Department implements new requirements of WIOA with regard to the operators of high-performing centers, the length of contractual agreements to operate Job Corps centers, and how entities are selected to receive funding to operate Job Corps centers and to provide outreach, admissions, and career transition support services. In addition to adding to the list of considerations currently used in selecting Job Corps center operators and service providers, WIOA emphasizes competition to increase the performance and quality of the Job Corps program. WIOA also provides that an entity, in its role as incumbent operator of a center deemed to be high performing, may compete in any competitive selection process carried out for an award to operate that center, even in cases where the selection of the operator is set

aside for small businesses as required by the Federal Acquisition Regulation. This serves to ensure continued access to high quality training and education for Job Corps students, since a high performing incumbent operator has an established and proven record of providing it.

WIOA also provides that a center operations contracts cannot exceed 2 years, with three 1-year options to renew. This codifies current Job Corps practice. Furthermore, WIOA precludes the Secretary from exercising an option to renew a center operations contract for an additional 1-year period if certain criteria are not met, with limited exceptions. All of these new and expanded provisions follow WIOA's theme of enhancing the Job Corps program and providing access to high quality training and education by ensuring Job Corps centers are staffed with high quality service providers.

§ 686.300 What entities are eligible to receive funds to operate centers and provide training and operational support services?

Proposed § 686.300 implements secs. 147(a)(1), 147(e), and 145(a)(3) of WIOA, establishing the entities eligible to receive funds to operate Job Corps centers, and to provide outreach and admissions, career transition, and other operational support services.

Proposed paragraphs (a)(1), (a)(2), and (a)(4) reflect the entities eligible to operate Job Corps centers listed in WIOA sec. 147(a)(1)(A). Proposed paragraph (a)(3) includes "Indian tribes and organizations" as eligible center operators, consistent with sec. 147(e) of WIOA. For purposes of this section, the Department interprets "Indian tribes and organizations" consistent with sec. 147(e)(2) of WIOA, which provides that the terms "Indian" and "Indian tribe" have the meanings given them in sec. 4 of the ISDEAA (codified at 25 U.S.C. 450b(d) and (e)), which says that "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in

or established pursuant to the Alaska Native Claims Settlement Act (codified at 43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Proposed paragraph (b) lists the entities eligible to receive funds to provide necessary services to Job Corps centers, including outreach and admissions, career transition, and other operational support services. Generally, as provided in WIOA sec. 147(a)(1)(B), local or other entities with the necessary capacity to provide activities described in this part are considered eligible entities. Paragraphs (b)(1), (b)(2), and (b)(3) reflect the entities listed in sec. 145(a)(3) of WIOA. Currently Job Corps also allows private for-profit and non-profit corporations to act as eligible service providers; paragraph (b)(2) clarifies that private for-profit and non-profit corporations continue to be included as business organizations eligible to receive funds as service providers.

§ 686.310 How are entities selected to receive funding to operate centers?

Proposed § 686.310 implements secs. 147(a)(2) and (a)(3) of WIOA, which contain new provisions to strengthen the Job Corps contracting process by requiring specific criteria that emphasize quality, performance, and accountability to be addressed as part of the selection process for center operators. The proposed section adopts these criteria to improve the effectiveness of the program in helping young people become responsible citizens by providing them with the skills they need for successful careers in in-demand industry sectors, occupations, or the Armed Forces, or for enrollment in post-secondary education. The Department welcomes comments on how best to embed a focus on quality, performance, and accountability into the procurement process.

Proposed § 686.310(a) implements sec. 147(a)(2)(A) of WIOA, stating that the Secretary selects eligible entities to operate contract centers on a competitive basis in accordance with applicable statutes and regulations. This paragraph also explains that in selecting an entity, ETA issues requests for proposals (RFPs) for the operation of all contact centers according to the Federal Acquisition Regulation (48 chapter 1) and the Department's Acquisition Regulation (48 chapter 29).

ETA develops RFPs for center operators in consultation with the Governor, the center workforce council (if established), and the Local Board for the workforce development area in which the center is located.

Proposed paragraph (b) requires that the RFPs for each contract center describe uniform specifications and standards, as well as specifications and requirements that are unique to the operation of the specific center.

Proposed paragraph (c) implements the factors for selection of an entity to operate a Job Corps center established in sec. 147(a)(2)(B)(i) of WIOA, by specifying that the selection criteria will be established by the Secretary and set forth in the RFP. Proposed paragraphs (c)(1) through (5) set forth the specific criteria that must be included in the RFP, as listed in sec. 147(a)(2)(B)(i) of WIOA. Paragraph (c)(1) retains the language found in the WIA regulations at 20 CFR 670.310(c)(1), requiring that the offeror demonstrate its ability to coordinate the activities carried out through the Job Corps center with activities carried out under the appropriate State and local workforce investment plans. This supports the overall goal of better connecting and aligning Job Corps with the workforce system.

Proposed paragraphs (c)(2) through (4) implement the criteria at WIOA secs. 147(a)(2)(B)(i)(II) through 147(a)(2)(B)(i)(IV). These provisions support the goal of better alignment with the workforce system and the increased focus on past performance and student outcomes against the primary indicators of performance for eligible youth and the Job Corps program.

Proposed paragraph (c)(5) is a new element in the selection process established in sec.

147(a)(2)(B)(i)(V) of WIOA, requiring that the criteria include the offeror's ability to demonstrate a record of successfully assisting at-risk youth to connect to the workforce, including providing them with intensive academics and career and technical training. This aligns with the increased focus on student outcomes and emphasizes the purpose of the program, which is to provide students with the skills they need for successful careers in in-demand industries, occupations, or the Armed Forces, or to continue on to post-secondary education. The Department welcomes comments on how to assess potential offerors' past records in assisting at- risk youth to connect to the workforce.

Proposed paragraph (d) implements the additional factors for selection of an entity to operate a Job Corps center that are specified in sec. 147(a)(3) of WIOA. These provisions support the goals of better alignment with the workforce system and increased focus on past performance and student outcomes against the primary indicators of performance for eligible youth and the Job Corps program. In addition, paragraph (d) specifies that the information described in paragraphs (d)(1) through (11) must be submitted at such time in the procurement process, and in such form, as the Secretary determines is appropriate.

§ 686.320 What if a current center operator is deemed to be an operator of a high-performing center?

Proposed § 686.320(a) implements sec. 147(b)(1) of WIOA, allowing an entity that, in its role as the incumbent operator of a center, meets the requirements of this section to be considered an operator of a high-performing center. If the entity is considered an operator of a

high-performing center, the entity must be allowed to compete in any competitive selection process carried out for an award to operate that center. This means that in cases where the selection of the operator of a particular center is set aside for small businesses as required by the Federal Acquisition

Regulation, the incumbent operator may participate in the subsequent competition for the center operations contract even if the operator would be otherwise ineligible to compete as a result of the set-aside.

Proposed paragraph (b) implements sec. 147(b)(2) of WIOA, which provides the criteria an operator must meet to be considered an operator of a high-performing center for the purposes of paragraph (a). First, under paragraph (b)(1), the center must be ranked among the top 20 percent of Job Corps centers for the most recent preceding PY according to the ranking described in proposed § 686.1070. Second, under paragraph (b)(2), the center must meet the expected levels of performance established with respect to each of the primary indicators of performance for eligible youth found in proposed § 686.1000. A center will be determined to have met the expected measures of performance if, per proposed § 686.320(b)(2)(i) and (ii), it achieved an average of at least 100 percent of the expected level of performance for the indicator over the most recent preceding 3 PYs, and, for the most recent preceding PY for which information is available at the time the determination is made, the center achieved at least 100 percent of the expected level of performance established for the indicator. This provision emphasizes the importance of meeting the expected levels of performance related to the primary indicators, by providing an opportunity for the most successful incumbent contractors to compete to operate a high-performing center even if the competition for that center is a small business set-aside and the incumbent would not normally meet the criteria to compete in a small business set-aside competition. The Department anticipates going through the market research phase of the

competition before determining whether the competition will be set aside for small businesses; a determination as to whether the incumbent contractor meets the criteria in proposed paragraph

(b) will likely be made after the market research phase is completed and before the issuance of the solicitation.

Proposed paragraph (c) implements the transition procedures in sec. 147(b)(3) of WIOA, and describes the criteria that must be met for an operator to be considered to be an operator of a high-performing center if any of the PYs described in paragraph (b) precede the implementation of the establishment of the expected levels of performance and the application of the primary indicators of performance for eligible youth.

§ 686.330 What is the length of an agreement entered into by the Secretary for operation of a Job Corps center and what are the conditions for renewal of such an agreement?

Proposed § 686.330 implements secs. 147(f)-(g) of WIOA, which contain new provisions to strengthen the Job Corps contracting process by enacting new requirements for the length of center operations contracts and the conditions under which they may be renewed. These provisions emphasize quality and integrity in center operators and direct the Secretary not to exercise option years for contracts where minimum standards of performance related to the primary indicators of performance for eligible youth are not met. These provisions further support the overall vision of improved performance and accountability for the Job Corps program.

Proposed § 686.330(a) implements sec. 147(f) of WIOA, which provides that contracts to operate a Job Corps center cannot exceed 2 years, but that the Secretary can exercise any contractual option to renew the agreement in 1-year increments for not more than 3 additional years. This proposed paragraph reflects current Job Corps contracting practice.

Proposed paragraph (b) explains that the Secretary will establish procedures for evaluating the option to renew an agreement that include an assessment of the factors described in proposed paragraph (c), a review of contract performance and financial reporting compliance, a review of the program management and performance data described in proposed §§ 686.975 and 686.980, and an evaluation of the factors described in proposed paragraph (d).

Proposed paragraph (c) implements sec. 147(g)(4) of WIOA, which establishes conditions that must be met for the Secretary to exercise a contractual option to renew an agreement for an entity to operate a Job Corps center.

Proposed paragraph (d) implements sec. 147(g)(1) of WIOA, which prohibits the Secretary from renewing an agreement for an entity to operate a Job Corps center for any 1-year additional period if, for both of the 2 most recent preceding PYs for which information is available at the time the determination to exercise an option is made, the center both has been ranked in the lowest 10 percent of Job Corps centers according to the ranking described in proposed § 686.1070 and has failed to achieve an average of 50 percent or higher of the expected level of performance with respect to each of the primary indicators of performance for eligible youth (as described in proposed § 686.1000). If a second year of program data is unavailable at the time the determination regarding the contractual option is made, proposed paragraph (d) requires the use of data from the preceding year from which performance information is available. This provision emphasizes the center operator's accountability for meeting the expected levels of performance related to the primary indicators by establishing minimum performance standards that must be met for the Secretary to exercise an option year.

Proposed paragraph (e) addresses the availability of information and data necessary to make the determination required by proposed paragraph (d). The availability of sufficient

information to make this determination is a particular concern in situations where there is a change of operators at the beginning of an agreement, and there is a period of time during which student outcome data, and thus the primary indicators of performance, reflect the performance of the previous operator rather than the operator upon whose contract the determination is being made.

In order to prevent an entity from being penalized for the poor performance of the previous

operator, proposed paragraph (e)(1) states that information will only be considered to be available for a PY for purposes of paragraph (d) if for each of the primary indicators of performance, all of the students included in the cohort being measured either began their participation under the current center operator or, if they began their participation under the previous center operator, were on center for at least 6 months under the current operator. Six months represents a sufficient length of time for the efforts of the current operator to influence the outcomes achieved by a student. Proposed paragraph (e)(2) further provides that if complete information for any of the indicators of performance described in paragraph (d)(2) is not available for either of the 2 PYs described in paragraph (d), the Secretary will review partial PY data from the most recent PY for those indicators, if at least 2 quarters of data are available, when making the determination required under paragraph (d)(2). The Department recognizes that data for some of the primary indicators of performance do not become mature for an extended period of time. For example, employment in the fourth quarter after exit and credential attainment are measured more than a year after the student exits the program and then are reported in a subsequent quarter. Because the Secretary's decision on whether to exercise the first option year is normally made about 18 months after the contract begins, in many cases complete information on employment in the fourth quarter after exit and credential attainment will not be available at the time the first option year decision is made. The Department invites comments on the issue of information availability, including the threshold for the point at which the performance of the center reflects the performance of the current operator.

Proposed paragraph (f) provides a transition provision for establishing the criteria that must be met for an operator to meet the requirements of proposed paragraph (d). The transition provisions apply if any of the PYs described in paragraph (d) precede the implementation of the primary indicators of performance for eligible youth and establishment of the expected levels of performance. While the WIOA statute does not include a transition provision, it is necessary to add such a

provision because although the WIOA contracting provisions, including this section, go into effect on July 1, 2015, the WIOA performance reporting requirements do not go into effect until July 1, 2016. In addition, there will be a gap in time during which initial data on the primary indicators of performance is being collected and baselines are being established when the expected levels of performance will not have been established and therefore, the data described in paragraph (d)(2) will not yet be available. ETA has modeled the transition language in proposed paragraph (f) on the transition provision in WIOA sec. 147(b)(3), which is used to determine whether a center is a high performing center, and based on criteria similar to the criteria in proposed paragraph (d). The transition bases the determination on similar data points using the performance of the Job Corps center regarding the national goals or targets established by the Office of the Job Corps under the previous performance accountability system, which is the available data that most closely aligns with the requirement in paragraph (d). Therefore, the Department chose this as the best proxy data available. The Department invites comments on the approach to transitioning from the WIA to WIOA performance management systems.

Proposed paragraph (g), implements sec. 147(g)(2) of WIOA, which provides an exception to the prohibition against exercising an option year for an operator of a low- performing center as determined under proposed paragraph (d).

As required in sec. 147(g)(3) of WIOA, if the Secretary exercises a contractual option by applying the exception described in proposed paragraph (g), proposed paragraph (h) requires the Secretary to provide a detailed explanation of the rationale for exercising the option to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate.

§ 686.340 How are entities selected to receive funding to provide outreach and admission, career transition and other operational support services?

Proposed § 686.340(a) implements sec. 147(a)(2)(A) of WIOA, generally describing the process by which eligible entities are selected to provide outreach and admissions, career transition, and other operational support services to the Job Corps program.

Proposed paragraph (b) requires that the RFP for each support service contract describes uniform specifications and standards, as well as specifications and requirements that are unique to the operation of the specific center.

Proposed paragraph (c) implements the factors for selection of an entity to provide operational support services, as established in sec. 147(a)(2)(B)(i) of WIOA, by specifying that the selection criteria will be established by the Secretary and set forth in the RFP. The criteria listed in proposed paragraphs (c)(1) through (5) are the same as those in proposed

§ 686.310(c)(1) through (5). Proposed paragraph (c)(6) provides that the Secretary may require additional information or selection factors in the RFP.

§ 686.350 What conditions apply to the operation of a Civilian Conservation Center?

Proposed § 686.350 is a new section that implements sec. 147(d) of WIOA. Proposed paragraph (a) implements sec. 147(d)(1) of WIOA, establishing that the Secretary of Labor may enter into an agreement with the Secretary of Agriculture to operate Job Corps centers called CCCs. Paragraph (a) also contains the description of the characteristics of CCCs.

Proposed paragraph (b) retains the language in the WIA regulations at 20 CFR 670.310(e) that when the Secretary of Labor enters into an agreement with the Secretary of Agriculture for the funding, establishment, and operation of CCCs, provisions are included to ensure that the Department of Agriculture complies with the regulations under this part.

Proposed paragraph (c), implementing sec. 147(d)(2) of WIOA, permits enrollees in CCCs to provide assistance in addressing national, State, and local disasters, consistent with relevant child labor laws. This proposed paragraph further requires that the Secretary of Agriculture ensure that enrollees are properly trained, equipped, supervised, and dispatched consistent with the standards for the conservation and rehabilitation of wildlife established under the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.).

Proposed paragraph (d) requires the Secretary of Agriculture to designate a Job Corps National Liaison to support the agreement between the Departments of Labor and Agriculture to operate CCCs, as required by sec. 147(d)(3) of WIOA.

Proposed paragraph (e) permits the Secretary, in consultation with the Secretary of Agriculture, to select a private entity to operate a CCC using the process and requirements described at § 686.310.

Proposed paragraph (f) permits the Secretary to close a CCC as part of the Department's administration of the Job Corps program if it determines that such action would be appropriate.

§ 686.360 What are the requirements for award of contracts and payments to Federal agencies?

Proposed § 686.360 states the requirements and authorities that apply to the award of contracts and payments to Federal agencies. This section retains the same requirements as those in the WIA regulations at 20 CFR 670.320.

5. Subpart D – Recruitment, Eligibility, Screening, Selection and Assignment,

Enrollment

This proposed subpart describes who is eligible for Job Corps under WIOA and provides additional factors that are considered in selecting eligible applicants for enrollment. Also described is how applicants who meet eligibility and selection requirements are assigned to centers, which implements WIOA's new requirements that the assignment plan consider the size and enrollment level of a center, including the education, training, and supportive services provided, and the performance of the Job Corps center related to the newly established expected levels of performance. WIOA also amends the assignment plan to provide for assignments at the center closest to home that offers the type of career and technical training selected by the individual rather than just the center closest to home, which improves access to high quality training for Job Corps students. These proposed regulations serve to enhance the Job Corps program overall by ensuring that the individual training and education needs of applicants and enrollees are met in accordance with the requirements of WIOA. They also ensure that applicants and enrollees are provided accurate information about the standards and expectations of the Job Corps program and are fully prepared to be successful.

§ 686.400 Who is eligible to participate in the Job Corps program?

Proposed paragraph (a) implements the eligibility requirements in sec. 144(a) of WIOA. According to WIOA, to be eligible to participate in the Job Corps, an individual must be at least

16 and not more than 24 years old at the time of enrollment, except that: under proposed paragraph (a)(1)(i), the Job Corps Director may waive the maximum age limitation described in paragraph (a)(1) and the requirement in paragraph (a)(1)(ii) for an individual with a disability who is otherwise eligible according to the requirements listed in §§ 686.400 and 686.410.

Proposed paragraph (a)(1)(ii) states that not more than 20 percent of individuals enrolled nationwide can be aged 22 to 24 at the time of enrollment. The regulatory language in paragraph (a)(1)(i) differs from the language in the WIA regulations at 20 CFR 670.400(a)(1). The proposed language is intended to enable the Job Corps Director to admit individuals with disabilities even if they exceed the age limitations in paragraph (a) as long as the Director determines that the individual meets all the other eligibility requirements listed in proposed

§ 686.410.

In addition to satisfying the age requirements above, proposed § 686.410 lists the additional requirements for a person to be eligible to participate in Job Corps. An individual must also be a low-income individual and be facing one or more of the following barriers to education and employment: be basic skills deficient, as defined in WIOA sec. 144(a)(3)(A); be a high school dropout; be homeless, as defined in sec. 41043(6) of the Violence Against Women Act of 1994 (42 U.S.C. 14043e-2(6)); be a homeless child or youth, as defined in sec. 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 1143a(2)); a runaway, an individual in foster care, or an individual who was in foster care and has aged out of the system; be a parent; or require additional education, career, and technical training, or workforce preparation skills in order to obtain and retain employment that leads to economic self-sufficiency.

Proposed paragraph (b) implements the special eligibility rule for veterans in sec. 144(b) of WIOA. That rule states that an otherwise eligible veteran may still enroll in Job Corps if they

do not meet the income requirement at § 686.400(a)(2) as a result of military income earned within the 6-month period prior to the individual's application for Job Corps, per 38 U.S.C. 4213.

§ 686.410 Are there additional factors which are considered in selecting an eligible applicant for enrollment?

In addition to the basic eligibility requirements identified above, proposed § 686.410 lists several additional criteria that must be met before an otherwise eligible applicant may be enrolled in Job Corps.

Proposed paragraph (a) provides, pursuant to sec. 145(a)(2)(C) of WIOA, that an otherwise eligible applicant can be selected for enrollment in Job Corps only if a determination is made, based on information relating to the background, needs and interests of the applicant, that the applicant's education and career and technical needs can best be met through the Job Corps program.

An additional determination, as described in proposed paragraph (b), implementing sec.

145(b)(1)(A) of WIOA, must also be made that there is a reasonable expectation that the applicant can participate successfully in group situations and activities, and is not likely to: engage in actions that would potentially prevent other students from receiving the benefit of the program; be incompatible with the maintenance of sound discipline; or impede satisfactory relationships between the center to which the student is assigned and the surrounding local communities. These requirements support the vision of Job Corps centers as safe environments with a culture that is conducive to student learning and achievement of the academic, technical, and social skills needed to obtain employment or enter post-secondary education.

Proposed paragraph (c) requires that an applicant must also be made aware of and understand the center's rules, the consequences for failing to observe the rules, and agree to comply with the rules.

Proposed paragraph (d) provides that no one will be denied enrollment in Job Corps solely on the basis of contact with the criminal justice system, except if the individual has been convicted of a felony consisting of murder, child abuse, or a crime involving rape or sexual assault, in accordance with secs. 145(b)(2) and (3) of WIOA. All applicants must also submit to a background check conducted according to procedures established by the Secretary and with applicable State and local laws. If the background check finds that the applicant is on probation, parole, under a suspended sentence, or under the supervision of any agency as a result of court action or institutionalization, the court or appropriate supervising agency may certify in writing that it will approve of the applicant's participation in Job Corps, and provide full release from its supervision, and that the applicant's participation and release does not violate applicable laws and regulations. However, the Department notes that although these individuals are eligible, the final admission decision remains with the Job Corps.

Finally, proposed paragraph (e) requires that suitable arrangements be made for the care of any dependent children for the proposed period of enrollment.

§ 686.420 Are there any special requirements for enrollment related to the Military Selective Service Act?

As required by WIOA sec. 146(a), this proposed section requires each male applicant 18 years of age or older, or a male student who turns 18 years of age, to present evidence that he has complied with sec. 3 of the Military Selective Service Act (50 U.S.C. App. 451 et seq.). These requirements are the same as those found at 20 CFR 670.420.

§ 686.430 What entities conduct outreach and admissions activities for the Job Corps program?

Proposed § 686.430 states that the Secretary makes arrangements with outreach and

admission agencies to perform Job Corps recruitment, screening and admissions functions according to standards and procedures issued by the Secretary. Entities eligible to receive funds to provide outreach and admissions service are identified in § 686.300(b).

§ 686.440 What are the responsibilities of outreach and admissions providers?

Proposed paragraphs (a) and (b) of this section require outreach and admission providers to perform a number of tasks to recruit and enroll students, including completing all Job Corps application forms and determining whether the applicants meet the eligibility and selection criteria outlined for participation in the program as provided in proposed §§ 686.400 and 686.410.

Proposed paragraph (c) clarifies that the Secretary may require that the National Director or his or her designee make determinations with regard to one or more of the eligibility criteria.

This proposed section retains the same requirements as those found at 20 CFR 670.450.

§ 686.450 How are applicants who meet eligibility and selection criteria assigned to centers?

In accordance with WIOA secs. 145(c) and (d), proposed § 686.450 describes the process for assigning applicants to Job Corps centers.

Applicants who meet the eligibility and selection requirements of proposed §§ 686.400 and 686.410 are assigned to a center based on an assignment plan developed by the Secretary based on an analysis of the factors described in proposed paragraph (a). These factors are specified in secs. 145(c) and (d) of WIOA. They are similar to the factors for the assignment plan required to

be developed under WIA, except that sec. 145(c)(2)(D) of WIOA also requires the Secretary to consider the performance of the center, as described in proposed § 686.450(a).

Proposed paragraph (b) describes the general rules for assignment of individual enrollees, consistent with sec. 145(d) of WIOA.

In accordance with sec. 145(d)(2) of WIOA, and similar to the same requirement in WIA, proposed paragraph (c) mandates that if a parent or guardian objects to the assignment of a student under the age of 18 to a center other than the center closest to home that offers the desired career and technical training, the Secretary must not make such an assignment.

§ 686.460 What restrictions are there on the assignment of eligible applicants for nonresidential enrollment in Job Corps?

In accordance with WIOA sec. 147(c), this proposed section requires that no more than 20 percent of students enrolled in Job Corps nationwide may be nonresidential students.

§ 686.470 May an individual who is determined to be ineligible or an individual who is denied enrollment appeal that decision?

Proposed § 686.470(a) describes the process for an applicant to appeal a denial of their application.

Proposed paragraph (b) states that if an applicant believes that he or she has been determined ineligible or not selected for enrollment in violation of the nondiscrimination and equal opportunity provisions contained in sec. 188 of WIOA and at 29 CFR part 37, the individual may file a complaint as described by the nondiscrimination regulations at 29 CFR part

37. Finally, proposed paragraph (c) requires that an applicant denied enrollment be referred to the appropriate one-stop center or other service provider as appropriate.

This proposed section retains the same requirements as those found at 20 CFR 670.470.

§ 686.480 At what point is an applicant considered to be enrolled in Job Corps?

Proposed § 686.480 delineates when an applicant is considered to be enrolled in Job Corps and requires that, based on procedures issued by the Secretary, center operators must document the enrollment of new students.

This proposed section retains the same requirements as those found at 20 CFR 670.480.

§ 686.490 How long may a student be enrolled in Job Corps?

This proposed section implements the requirements in sec. 146(b) of WIOA. Proposed paragraph (a) states the general rule that a student may remain enrolled in Job Corps for no more than 2 years.

However, proposed paragraph (b) implements four exceptions to this rule, consistent with sec. 146(b) of WIOA, which permit the 2 years to be extended in specific cases. Paragraph (b)(1) permits the Secretary to extend the 2 year enrollment period in special cases, according to procedures issued by the Secretary. Paragraph (b)(2) permits up to a 1 year extension of a student's enrollment in an advanced career training program in order to complete the program.

Paragraph (b)(3) permits an extension for a student with a disability who would reasonably be expected to meet the standards for a Job Corps graduate if allowed to participate in the Job Corps for up to an additional year. Finally, proposed paragraph (b)(4) permits a student who participates in

national service authorized by a CCC to have his or her enrollment extended for the amount of time equal to the period of national service. This paragraph (b)(4) implements sec. 146(a)(3) of WIOA. WIOA also states that students enrolled in CCCs may provide assistance in addressing national, State, and local disasters (sec. 147(d)(2) of WIOA; see proposed

§ 686.610(a)). Both of these provisions are new in WIOA. Taken together, these provisions show WIOA's added attention to ensuring that Job Corps students in CCCs have the flexibility to

provide assistance, such as fire-fighting, for example, when needed in a disaster. The Department notes that similar to the provision in proposed § 686.490(b)(4) that addresses national service, the Secretary is authorized to extend the enrollment period for students who perform service to address State and local disasters or other needs under proposed

§ 686.490(b)(1).

6. Subpart E – Program Activities and Center Operations

This proposed subpart describes the services and training that a Job Corps center must provide. Job Corps distinguishes itself from other training programs by providing students with residential services in combination with hands-on training and experience aligned with industry standards. While education, training, and job placement are core components of what the program offers, this section of the regulations describes how Job Corps provides a comprehensive service model that also includes life skills, emotional development, personal management, and responsibility. New regulations addressing advanced career training programs are included; such programs provide broader opportunities for higher wages and career advancement.

This proposed subpart also establishes the requirements for a student accountability system and behavior management system. Job Corps' policy for violence, drugs, and unauthorized goods is described. Requirements to ensure students are provided due process in disciplinary actions, to include center fact-finding and review board and appeal procedures are outlined. These systems and requirements serve to enhance the Job Corps program by ensuring that Job Corps centers are safe and secure environments that promote the education and training of students. Approved experimental, research and demonstration projects related to the Job

Corps program are authorized in this proposed subpart, which also serves to enhance the program.

§ 686.500 What services must Job Corps centers provide?

Proposed paragraph (a) specifies that Job Corps centers must provide an intensive, well-organized and fully supervised program, including training activities, work-based learning and experience, residential support services, and other services as required by the Secretary.

Proposed paragraph (a)(1) describes training activities to include career and technical training, academic education, and employability and independent learning and living skills development. Job Corps is first and foremost a career training program, and an essential part of preparing enrollees for success upon exit necessitates providing employability, social, and independent-living skills.

Proposed paragraph (b) provides that students must be provided with access to career services as described in WIOA secs. 134(c)(2)(A)(i) through (xi).

§ 686.505 What types of training must Job Corps centers provide?

In order to provide enrollees with the intensive program of activities required by WIOA, several types of training must be provided by Job Corps centers.

Proposed paragraph (a) requires that centers provide students with a CTT program that is aligned with industry-recognized standards and credentials. Ensuring that training programs are aligned with industry standards and credentials better prepares students to attain in-demand, long-term employment; further career enhancement along a career pathway; or advanced education, including apprenticeships.

Proposed paragraph (b) requires that centers provide an education program, including English language acquisition programs, as required by sec. 148(a)(1) of WIOA, as well as high school diploma (HSD) or high school equivalency certification programs, and academic skills training. These skills are necessary for students to master technical skills in their chosen CTT programs.

Proposed paragraph (c) states that centers must provide programs for students to learn and practice employability and independent learning and living skills. These skills include: job search and career development, interpersonal relations, driver's education (as required by sec. 148(a)(1) of WIOA), study and critical thinking skills, financial literacy and other skills specified in program guidance issued by the Secretary. Learning these skills will enable long-term labor market attachment and are critical to the continuing success of enrollees after leaving the Job Corps program.

Proposed paragraph (d) requires all Job Corps training programs to be based on industry and academic skills standards leading to recognized industry and academic credentials, applying evidence-based instructional approaches, with the goal of placing students in unsubsidized employment in in-demand jobs with career advancement opportunities; enrollment in advanced education and training programs or apprenticeships; or enlistment in the Armed Forces.

Responsiveness to employers' and industries' needs for employees who are prepared with the academic, technical, and employability skills necessary for career success is required in order to effectively place students and to sustain Job Corps' relationships with employers.

Proposed paragraph (e) requires that specific career and technical training programs offered by individual centers must be approved by the Regional Director. Approval is necessary to ensure that the training provided by Job Corps meets industry workforce needs.

Proposed paragraph (f) states the responsibilities of the center workforce council in shaping a center's career and technical training program, as described in § 686.800.

Proposed paragraph (g) retains the same requirements as those in the WIA regulations at 20 CFR 670.505(c), requiring that each center must implement a system to evaluate and track the progress and achievement of each student at regular intervals.

Proposed paragraph (h) states that each center must develop a training plan that must be available for review and approval by the appropriate Regional Director. It retains the same requirements as those in 20 CFR 670.505(d).

§ 686.510 Are entities other than Job Corps center operators permitted to provide academic and career and technical training?

Proposed paragraph (a) implements sec. 148(b) of WIOA, which lists the entities that the Secretary may use to provide career technical and academic education of Job Corps students, as long as the entity can provide education and training substantially equivalent in cost and quality to that which the Secretary could provide through other means.

Proposed paragraph (b) states that these entities will be selected in accordance with the requirements of § 686.310.

§ 686.515 What are advanced career training programs?

Advanced career training provides students an opportunity to receive advanced education or training while still receiving the benefits and services provided by Job Corps. In order to be eligible, students must have a HSD or its equivalent and have completed a Job Corps CTT program. Proposed paragraphs (a) and (b) restate the requirements for advanced career training programs in secs. 148(c)(1)-(2) of WIOA.

Advanced career training programs are authorized by the Secretary based on the relationship between on board strength and training slot availability. Proposed paragraph (c), which restates the requirements found in WIOA sec. 148(c)(3), permits a center operator to

enroll more students than otherwise authorized by the Secretary in an advanced career training program if, in accordance with standards developed by the Secretary, the operator demonstrates that participants in the program have achieved a satisfactory rate of training and placement in training-related jobs, and for the most recently preceding 2 PYs, the operator has, on average, met or exceeded the primary indicators for eligible youth described in § 686.980.

§ 686.520 What responsibilities do the center operators have in managing work-based learning?

This section retains the same requirements as those in the WIA regulations at 20 CFR

670.515. Proposed § 686.520(a) requires that center operators emphasize and implement work-based learning programs for students through center program activities, including career and

technical skills training, and through arrangements with employers. This paragraph further requires that work-based learning must be under actual working conditions and be designed to enhance the employability, responsibility, and confidence of the students. Work-based learning usually occurs in tandem with students' career and technical training, and is intended to develop a further understanding of career opportunities, employer expectations, and the impact of post- secondary education in the workplace. Work-based learning can include structured, hands-on experiences, as well as workplace tours, employer presentations, and job shadowing to help students refine their career objectives.

Proposed paragraph (b), in accordance with sec. 159(g)(2) of WIOA, states that the center operator must ensure that the students are assigned only to workplaces that meet the safety standards described in § 686.920.

§ 686.525 Are students permitted to hold jobs other than work-based learning opportunities?

Proposed § 686.525 states that a center operator may authorize a student to participate in gainful leisure time employment, as long as the employment does not interfere with required scheduled academic and CTT activities. This section retains the same requirements as those in the WIA regulations at 20 CFR 670.520.

§ 686.530 What residential support services must Job Corps center operators provide?

Proposed § 686.530 states that Job Corps center operators must provide residential support services according to procedures issued by the Secretary. Residential support services are critical for the success of the Job Corps programs because they are central to creating and maintaining

environments that allow enrollees to learn, practice independent and community living skills, promote personal responsibility, and reinforce social and employability skills, such as a positive attitude, dependability, and teamwork. This proposed section retains largely the same requirements as those contained in the WIA regulations at 20 CFR 670.525.

The Department notes that one of the requirements is that a student leadership program and an elected student government is supported by the center operator. The goals of student leadership programs are to provide opportunities for interested students to develop leadership skills through participation in student governance, representing Job Corps in the community at large, planning and leading Job Corps events, and providing input and feedback for center management decisions that impact student services and/or residential living.

§ 686.535 Are Job Corps centers required to maintain a student accountability system?

Job Corps centers are required to maintain a student accountability system, as described at proposed § 686.535. This proposed section retains the same requirements as those contained in the WIA regulations at 20 CFR 670.530. An accountability system is important to ensure the safety and security of Job Corps students and to track participation in various activities in order to evaluate program delivery.

§ 686.540 Are Job Corps centers required to establish behavior management systems?

Proposed § 686.540 states that each Job Corps center must establish and maintain a behavior management system, based on a behavior management plan, consistent with the standards of conduct and procedures established by the Secretary. The behavior management plan must be

approved by the Job Corps regional office and reviewed annually. The system must include Job Corps' zero tolerance policy for violence and drugs as described in § 686.545.

§ 686.545 What is Job Corps' zero tolerance policy?

Proposed § 686.545(a) requires all center operators to comply with Job Corps' zero tolerance policy as established by the Secretary. Infractions addressed in the zero tolerance policy must include, but are not limited to: actions of violence, as defined by the Secretary; use, sale, or possession of a controlled substance, as defined at 21 U.S.C. 802; abuse of alcohol; possession of unauthorized goods; or other illegal or disruptive activity.

Proposed paragraph (b) implements secs. 145(a)(2)(A) and 152(b)(2) of WIOA, providing that all students must be tested for drugs as a condition of enrollment.

Proposed paragraph (c) provides that the zero tolerance policy established by the Secretary specifies the offenses that will result in the separation of students from the Job Corps. This paragraph further provides that the center director is expressly responsible for determining when such an offense has occurred.

§ 686.550 How does Job Corps ensure that students receive due process in disciplinary actions?

Proposed § 686.550 provides that a center operator must ensure that all students receive due process in disciplinary proceedings according to procedures developed by the Secretary.

This proposed section retains the same requirements as those contained in the WIA regulations at 20 CFR 670.545.

§ 686.555 What responsibilities do Job Corps centers have in assisting students with child care needs?

Proposed § 686.555 implements the requirement in sec. 148(e) of WIOA that the Secretary provide for child care to the extent practicable. Proposed paragraph (a) encourages Job Corps centers to coordinate with outreach and admissions agencies to assist applicants, whenever feasible, with making arrangements for child care. This paragraph also requires that, prior to enrollment, a program applicant with dependent children who provides primary or custodial care must certify that suitable arrangements for child care have been established for the proposed period of enrollment. This is necessary to ensure full program participation once a student is enrolled.

Proposed paragraph (b) states that a child development program may be located at a Job Corps center with the approval of the Secretary.

§ 686.560 What are the center's responsibilities in ensuring that students' religious rights are respected?

Proposed § 686.560 retains the same requirements found in the WIA regulations at 20 CFR 670.555.

§ 686.565 Is Job Corps authorized to conduct pilot and demonstration projects?

Proposed § 686.565(a) establishes that the Secretary may undertake experimental, research and demonstration projects related to the Job Corps program as long as the projects are developed, approved, and conducted in accordance with the policies and procedures developed by the Secretary, in accordance with sec. 156(a) of WIOA.

7. <u>Subpart F – Student Support</u>

Proposed subpart F discusses the support services provided to Job Corps enrollees, including transportation to and from Job Corps centers, authorized student leave, allowances and performance bonuses, and student clothing. In addition to being eligible to receive transportation to and from Job Corps centers, students are eligible for other benefits, including basic living allowances to cover personal expenses, in accordance with guidance issued by the Secretary.

Students are also provided with a modest clothing allowance to enable them to purchase clothes that are appropriate for the classroom and the workplace. These proposed regulations again work to strengthen the Job Corps program and provide access to high quality training by ensuring that Job Corps students are placed in the best possible position to prepare them for learning, and that they are rewarded for their success in the program.

§ 686.600 Are students provided with government-paid transportation to and from Job Corps centers?

Proposed § 686.600 states that Job Corps provides students with transportation to and from Job Corps centers, according to policies and procedures established by the Secretary. This section retains the same requirements as those in the WIA regulations at 20 CFR 670.600.

§ 686.610 When are students authorized to take leaves of absence from their Job Corps centers?

Proposed § 686.610 provides that Job Corps students are eligible for annual leave, emergency leave, and other types of leaves of absence from their assigned centers. Procedures for requesting, approving, and recording student leave will be based on criteria and requirements issued by the Secretary. This section retains the same requirements found in the WIA regulations at 20

CFR 670.610. Additionally, proposed § 686.600(a) states that in accordance

with sec. 147(d)(2) of WIOA, enrollees in CCCs may take leave to provide assistance in addressing national, State, and local disasters.

§ 686.620 Are Job Corps students eligible to receive cash allowances and performance bonuses?

Proposed § 686.620(a) allows, based on criteria and rates established by the Secretary, Job Corps students to receive cash living allowances, performance bonuses, and allotments for care of dependents. Also, graduates receive post-separation transition allowances according to proposed § 686.750. This paragraph largely retains the same requirements in the WIA regulations at 20 CFR 670.620(a), but revises the description of the payments to align with sec. 150(b) of WIOA.

Under proposed paragraph (b), in the case of a student's death, any amount due is to be paid according to 5 U.S.C. 5582, governing issues including designation of a beneficiary, order of precedent, and related matters. This paragraph retains the same requirements as those found at 20 CFR 670.620(b).

§ 686.630 Are student allowances subject to Federal payroll taxes?

As required by sec. 157(a)(2) of WIOA, proposed § 686.630 requires that Job Corps student allowances be subject to Federal payroll tax withholding and Social Security taxes. For purposes of the Internal Revenue Code of 1986 and title II of the SSA (42 U.S.C. 401 et seq.), enrollees are deemed to be employees of the United States.

§ 686.640 Are students provided with clothing?

Proposed § 686.640 provides that, according to rates, criteria, and procedures issued by the Secretary, center operators and other service providers must provide Job Corps students with a clothing allowance and/or articles of clothing as needed to facilitate their participation in Job Corps and successful entry into the workforce. This proposed section retains the same requirements as those in the WIA regulations at 20 CFR 670.640.

8. Subpart G – Career Transition and Graduate Services

This proposed subpart discusses career transition and graduate services for Job Corps enrollees. Job Corps focuses on placing program graduates in full time jobs, post-secondary education, advanced training programs, including apprenticeship programs, or the Armed Forces. In an effort to further integrate the Job Corps program with the greater workforce system and align it with the core programs, proposed § 686.820 specifically focuses on how Job Corps will coordinate with other agencies, where emphasis is placed on utilizing the one-stop delivery system to the maximum extent practicable. This proposed subpart also outlines a center's responsibilities in preparing students for career transition services; the career transition services that are provided for enrollees; who m6ay provide career transition and graduate services, in addition to one-stop centers; and services provided for graduates and former enrollees.

§ 686.700 What are a Job Corps center's responsibilities in preparing students for career transition services?

Proposed § 686.700 implements sec. 149(a) of WIOA, providing that Job Corps centers assess and counsel enrollees to determine their competencies and capabilities and readiness for

career transition services prior to their scheduled graduation. The purpose of counseling and assessment is to determine students' capabilities to allow them to either be placed into employment leading to self-sufficiency based on their training, or to assist the student in participating in further activities leading to the capabilities necessary for placement.

§ 686.710 What career transition services are provided for Job Corps enrollees?

Proposed § 686.710 implements sec. 149(b) of WIOA, requiring that career transition services focus on placing program graduates in full time jobs that are related to their career and technical training and that lead to economic self-sufficiency; higher education; advanced training programs, including apprenticeship programs; or the Armed Forces.

§ 686.720 Who provides career transition services?

As required by sec. 149(b) of WIOA, proposed § 686.720 states that the one-stop delivery system must be used to the maximum extent practicable in placing graduates and former enrollees in jobs. Multiple other resources can also provide post-program services, including, but not limited to, Job Corps career transition service providers and State VR agencies for individuals with disabilities.

§ 686.730 What are the responsibilities of career transition service providers?

Proposed § 686.730 contains the responsibilities of career transition service providers.

The section largely retains the same requirements found in the WIA regulations at 20 CFR 670.730.

§ 686.740 What services are provided for program graduates?

As required by sec. 148(d) of WIOA, proposed § 686.740 states that career transition and support services must be provided to program graduates for up to 12 months after graduation, according to procedures issued by the Secretary.

§ 686.750 Are graduates provided with transition allowances?

Proposed § 686.750 states that Job Corps graduates receive post-separation transition allowances. As required by sec. 150(b) of WIOA, the transition allowance must be incentive-based to reflect a graduate's completion of academic, career, and technical education or training, and attainment of recognized post-secondary credentials.

§ 686.760 What services are provided to former enrollees?

Proposed § 686.760(a) implements sec. 150(c) of WIOA, allowing for the provision of 3 months of ESs to former enrollees.

Proposed paragraph (b) states that Job Corps centers may provide other assessment, counseling, or career transition services to help former enrollees find and retain employment, if determined appropriate, according to procedures issued by the Secretary.

9. <u>Subpart H – Community Connections</u>

This proposed subpart highlights WIOA's focus on community relationships and further integration with the workforce system. In both the new contracting provisions in proposed subpart C and in this subpart, there is more emphasis on connections with one-stops, Local Boards, and State and local plans. While WIA's requirement for a Business and Community Liaison has been eliminated, the responsibility for establishing beneficial business and community relationships and networks now lies with the director of each Job Corps center.

Moreover, WIOA contains a new requirement that in a single-State local area, a representative of the State Board must be included on the workforce council. Proposed § 686.810 also states, consistent with sec. 154(b)(2) of WIOA, that the workforce council may include employers from outside the local area that are likely to hire center graduates. The new requirements for the workforce council seek to provide greater access to high quality training for Job Corps students, in part by ensuring that Job Corps is providing training in in-demand industry sectors and occupations.

§ 686.800 How do Job Corps centers and service providers become involved in their local communities?

While WIA's requirement for a Business and Community Liaison designated by the director of each center has been eliminated, the director of each Job Corps center must still ensure that mutually beneficial business and community relationships and networks are established and developed. As required by sec. 153 of WIOA, proposed § 686.800(a) states that each Job Corps center director must establish relationships with local and distant employers; applicable one-stop centers and Local Boards; entities carrying out relevant apprenticeship programs and youth programs; labor-management organizations and local labor organizations; employers and contractors that support national training programs and initiatives; and CBOs, non-profit organizations, and intermediaries providing workforce development and support services. Through these relationships, Job Corps hopes to improve the quality of the training programs that it offers and create meaningful

associations with other entities with which it interacts and shares similar goals.

Under proposed paragraph (b), each Job Corps center must also establish and develop relationships with members of the community in which it is located. This paragraph further proposes that members of the community be informed of projects of the center and changes in the rules, procedures, or activities of the center that may affect the community. Through these efforts, Job Corps aims to garner the support and endorsement of the local community.

§ 686.810 What is the makeup of a workforce council and what are its responsibilities?

Section 154 of WIOA requires each center to establish a workforce council according to procedures established by the Secretary. Proposed § 686.810 implements this provision. It specifies that the council must include: non-governmental and private sector employers;

representatives of labor organizations and employees; Job Corps enrollees and graduates; and, in the case of a single State local area, a representative of the State Board.

Proposed paragraph (b) describes the composition of the workforce council, consistent with the requirements of sec. 154(b) of WIOA.

Proposed paragraph (c) states that the workforce council may also include, or otherwise provide for consultation with, employers from outside the local area who are likely to hire a significant number of enrollees from the Job Corps center.

Proposed paragraph (d)(1) implements sec. 154(c)(1) of WIOA by identifying that the first responsibility of the workforce council is to work with all applicable Local Boards and review labor market information to determine and provide recommendations to the Secretary regarding the center's career and technical training offerings, including identifying the emerging occupations

suitable for training. In doing so, Job Corps hopes to remain current in its CTT offerings, adjusting and supplementing its training offerings based on the needs of industry in the surrounding communities.

Proposed § 686.810(d)(2) and (3) state the remaining duties of the workforce council, in accordance with secs. 154(c)(2)-(3) of WIOA.

§ 686.820 How will Job Corps coordinate with other agencies?

Proposed § 686.820 describes how Job Corps coordinates with other agencies. This section retains the same requirements found in the WIA regulations at 20 CFR 670.760 and 20 CFR 670.800(g). Paragraph (b) of this section describes the linkages required between Job Corps and the one-stop service system and paragraph (c) indicates that Job Corps is identified as a required one-stop partner. The Department notes that in addition to these linkages, similar to the requirement in WIA, proposed § 678.400 identifies Job Corps as a required one-stop partner,

as required by sec. 121(b)(1)(B)(i) of WIOA. Additionally, similar to the WIA regulations at 20 CFR 670.800(g), proposed § 678.415 specifies that the Job Corps center is the Job Corps "entity" that is required to serve as the one-stop partner in any local area where a center exists. Job Corps centers are encouraged to review the requirements of one-stop partners described in subpart B of part 678 of these proposed regulations.

10. Subpart I – Administrative and Management Provisions

The proposed subpart provides requirements relating to tort claims, Federal Employees Compensation Act (FECA) benefits for students, safety and health, and law enforcement jurisdiction

on Job Corps center property. It also addresses whether Job Corp operators and service providers are authorized to pay State or local taxes on gross receipts, and details the financial management responsibilities of center operators and other service providers. The management of student records, as well as procedures applicable to the disclosure of information about Job Corps students and program activities are outlined. Finally, procedures available to resolve complaints and disputes, and how Job Corps ensures that complaints or disputes are resolved in a timely fashion, are addressed. The entirety of this proposed subpart addressing administrative and management principles that apply to the operation of the Job Corps program serves to promote its accountability and transparency.

§ 686.900 Are damages caused by the acts or omissions of students eligible for payment under the Federal Tort Claims Act?

In accordance with sec. 157(a)(4) of WIOA, proposed § 686.900 states that students are considered Federal employees for purposes of the FTCA (28 U.S.C. 2671 et seq.) and that claims for such damage must be filed pursuant to the procedures found in 29 CFR part 15, subpart D.

This proposed section retains the same requirements as those found in the WIA regulations at 20 CFR 670.900.

§ 686.905 Are loss and damages that occur to persons or personal property of students at Job Corps centers eligible for reimbursement?

Proposed § 686.905 states that the Job Corps program may pay students for valid claims under the procedures found in 29 CFR part 15, subpart D. This proposed section retains the same requirements found at 20 CFR 670.905.

§ 686.910 If a student is injured in the performance of duty as a Job Corps student, what benefits

may the student receive?

Proposed § 686.910 implements sec. 157(a)(3) of WIOA. Paragraph (a) states that Job Corps students are considered Federal employees for purposes of the FECA, as specified in sec. 157(a)(3) of WIOA (29 U.S.C. 2897). Proposed paragraphs (b) through (d) outline the requirements for Job Corps students' eligibility for FECA benefits and the procedures by which the benefits are paid. These paragraphs contain the same requirements as those in § 670.910 of the WIA regulations.

§ 686.915 When is a Job Corps student considered to be in the performance of duty?

Proposed § 686.915 outlines when a Job Corps student is considered to be in the performance of duty. This proposed section retains the same requirements as those found at 20 CFR 670.915.

§ 686.920 How are students protected from unsafe or unhealthy situations?

Proposed § 686.920(a) states that the Secretary will establish procedures to ensure that students are not required or permitted to work, be trained, reside in, or receive services in buildings or surroundings or under conditions that are unsanitary or hazardous. This section

further states, consistent with sec. 159(g)(2) of WIOA, that whenever students are employed or in training for jobs, they must be assigned only to jobs or training which observe applicable Federal, State, and local health and safety standards. This proposed paragraph retains the same requirements found at 20 CFR 670.935.

Proposed paragraph (b) states that the Secretary will develop procedures to ensure compliance with applicable DOL Occupational Safety and Health Administration (OSHA) regulations and Wage and Hour Division (WHD) regulations.

§ 686.925 What are the requirements for criminal law enforcement jurisdiction on center property?

Proposed § 686.925 provides information about criminal law enforcement jurisdiction on Job Corps center property. This proposed section retains the same requirements found in the WIA regulations at 20 CFR 670.940.

§ 686.930 Are Job Corps operators and service providers authorized to pay State or local taxes on gross receipts?

Consistent with sec. 158(d) of WIOA, proposed § 686.930 explains some of the tax liabilities that apply to Job Corps center operators.

This proposed section retains the same requirements as those found at 20 CFR 670.945.

§ 686.935 What are the financial management responsibilities of Job Corps center operators and other service providers?

As required by WIOA sec. 159(a), proposed § 686.935 states the financial management responsibilities that apply to Job Corps center operators and other service providers.

This proposed section retains the same requirements as those found at 20 CFR 670.950.

§ 686.940 Are center operators and service providers subject to Federal audits?

As required by WIOA sec. 159(b), proposed § 686.940 explains how Job Corps center operators and other service providers are subject to Federal audits.

This proposed section retains the same requirements found in the WIA regulations at 20 CFR 670.955.

§ 686.945 What are the procedures for management of student records?

Proposed § 686.945 states that the Secretary will issue guidelines for a system for maintaining records for each student during enrollment and for disposition of records after separation. This proposed section retains the same requirements as those found at 20 CFR 670.960.

§ 686.950 What procedures apply to disclosure of information about Job Corps students and program activities?

Proposed § 686.950 discusses the procedures that apply to disclosure of information about Job Corps students and program activities.

This proposed section retains the same requirements as those found at 20 CFR 670.965.

§ 686.955 What are the reporting requirements for center operators and operational support service providers?

Proposed § 686.955 states that the Secretary will establish procedures to ensure the timely and complete reporting of necessary financial and program information to maintain accountability. Under this section, center operators and operational support service providers are responsible for the accuracy and integrity of all reports and data they provide. This proposed section retains the same

requirements as those found at 20 CFR 670.970.

§ 686.960 What procedures are available to resolve complaints and disputes?

In support of the Department's commitment to ensuring that students are entitled to a fair process, proposed § 686.960 outlines the procedures that are available to resolve student complaints and disputes. This section retains the same requirements found in the WIA regulations at 20 CFR 670.991.

§ 686.965 How does Job Corps ensure that complaints or disputes are resolved in a timely fashion?

Proposed § 686.965 outlines the procedures that are available to ensure timely resolution of a complaint or dispute. This section retains the same requirements as those found at 20 CFR 670.991.

§ 686.970 How does Job Corps ensure that centers or other service providers comply with the Act and the Workforce Innovation and Opportunity Act regulations?

Proposed § 686.970 explains the procedures Job Corps will use to ensure Job Corps center operators and other service providers comply with WIOA and this part. This proposed section retains the same requirements found in the WIA regulations at 20 CFR 670.992.

§ 686.975 How does Job Corps ensure that contract disputes will be resolved?

Proposed § 686.975 states that a dispute between the Department and a Job Corps contractor will be handled according to the Contract Disputes Act and applicable regulations. This proposed section retains the same requirements as those found at 20 CFR 670.993.

§ 686.980 How does Job Corps resolve disputes between the U.S. Department of Labor and the U.S. Department of Agriculture regarding the operation of Civilian Conservation Centers?

Proposed § 686.980 states that disputes between the Department and the U.S. Department of Agriculture regarding operating a center will be handled according to the interagency agreement between the two agencies. This proposed section retains the same requirements as those found at 20 CFR 670.994.

§ 686.985 What Department of Labor equal opportunity and nondiscrimination regulations apply to Job Corps?

Proposed § 686.985 states that nondiscrimination requirements, procedures, complaint processing, and compliance reviews would be governed by provisions of the Department's regulations, as applicable. This proposed section retains the same requirements found in the WIA regulations at 20 CFR 670.995.

11. Subpart J – Performance

Proposed subpart J incorporates WIOA-specific requirements related to performance assessment and accountability, as well as requirements for performance improvement plans for Job Corps center operators who fail to meet expected levels of performance. The Job Corps program is now required to report on the performance indicators common to all WIOA programs that provide key employment information on how many students entered and retained employment, their median

wages, whether they attained credentials, their measurable skills gains, and effectiveness of services to employers. The entirety of this proposed subpart serves to promote the accountability, performance, and transparency of the Job Corps program.

§ 686.1000 How is the performance of the Job Corps program assessed?

Proposed § 686.1000 describes the performance management system the Secretary will establish to meet the requirements for management information in sec. 159 of WIOA.

Proposed paragraph (a) indicates that the performance of the Job Corps program as a whole, and the performance of individual centers, outreach and admission providers, and career transition service providers, will be assessed in accordance with required procedures and

standards issued by the Secretary, through a national performance management system described in proposed paragraph (b) that includes the Outcome Measurement System (OMS). The Department proposes to continue its use of a national performance management system that includes the OMS because such a system is needed to track and report all of the management information required in sec. 159 of WIOA. The management information requirements include establishing expected levels of performance and collecting and reporting data on each center's performance relating to the primary indicators of performance for eligible youth, the performance indicators for outreach and admission providers, and the performance indicators for career transition service providers required under WIOA sec. 159(c); collecting and reporting data on each center's performance relating to the additional information required to be submitted in the annual report to Congress under sec. 159(d) of WIOA; collecting and reporting information regarding the state of Job Corps buildings and facilities under sec. 159(h) of WIOA; and collecting and reporting information regarding national and community service activities of enrollees under sec. 159(i) of WIOA.

Consistent with current practice, proposed paragraph (b) states that the performance management system will include measures that reflect not only the primary indicators of performance described in proposed § 686.1010, but also the information needed to complete the Annual Report described in proposed § 686.1040, as well as any other information the Secretary determines is necessary to manage and evaluate the effectiveness of the Job Corps program.

Job Corps' performance management system, which includes the OMS, is a well-established measurement system within the Job Corps community that has been used to track performance of centers and service providers for many years. It will be updated to reflect the new requirements of WIOA, including the new primary indicators of performance. The

performance management system is designed to provide the Secretary with the information necessary to manage and evaluate the effectiveness of the Job Corps program. It currently includes data on the WIA common measures, each center's success in filling student slots or on- board strength (OBS), information on the results of Regional Office Center Assessments, and the OMS.

The OMS currently includes the following 15 measures: HSD or General Educational Development (GED) Attainment Rate, CTT Completion Rate, Combination HSD or GED, and CTT Attainment Rate, Average Literacy Gain, Average Numeracy Gain, CTT Industry- Recognized Credential Attainment Rate, CTT Completer Job-Training Match/Post-secondary Credit Placement Rate, Former Enrollee Initial Placement Rate, Graduate Initial Placement Rate, Graduate Average Hourly Wage at Placement, Graduate Full-Time Job Placement Rate, Graduate 6-Month Follow-up Placement Rate, Graduate 6-Month Average Weekly Earnings, Graduate 12-Month Follow-up Placement Rate, and Graduate 12-Month Follow-up Weekly Earnings. These measures are based on the current performance requirements under WIA, and in some cases break down an overarching measure to provide a more detailed look at elements that make up the overarching measures. For example, one of the WIA common measures is the percent of students who achieve literacy or

numeracy gains. In the OMS, literacy gains and numeracy gains are broken into two separate measures that provide program managers with an additional level of detail. A center may be achieving a high level of literacy gains but lagging in numeracy gains. In the combined measure that distinction would be hidden, but with the broken out measure, program managers can more specifically identify where to target interventions to support achievement of the overall common measure. Similarly, the OMS will be updated to

reflect the primary indicators, but may also include breakouts of data that will help program managers target interventions in order to achieve the primary indicators.

Four of the new primary indicators of performance under WIOA are long-term measures, meaning that the point of measurement is as much as a year after a student exits the Job Corps program. These measures are valuable in assessing the performance of the program, but additional shorter-term measures are needed to supplement the primary indicators and provide program managers with information on a quicker cycle that can be used to make adjustments in the program on a faster timeframe. This includes measures such as the CTT completion rate, which provides useful information about the quality of the training programs at a center without waiting for the student outcome data to become fully available. When updating the OMS, the Department will begin to incorporate the primary indicators and other measures that will drive the system towards attainment of the WIOA primary indicators, while still maintaining other shorter-term measures that will provide additional information that the Secretary believes is necessary to manage and evaluate the effectiveness of the Job Corps program. The Department welcomes comments on this approach, and specifically on which short-term measures should be maintained in the new OMS system.

Over the years as program reporting requirements have changed from the Government Performance and Results Act (GPRA), the Program Assessment and Rating Tool (PART), and Common Measures, the OMS has proven to be flexible and through its mix of measures, goals, and

weights, and successful in driving the system towards meeting changing priorities. For example, when additional emphasis was placed on longer term attachment to the workforce, Job Corps added 12-month placement and 12-month earnings to the existing line-up of measures included on the OMS as a clear indication to program operators of the new priority. Similarly,

beginning in PY 2016, the OMS will be updated to reflect the new primary indicators of performance under WIOA.

Proposed paragraph (b) also indicates that the Secretary will issue annual guidance describing the performance management system and OMS. This guidance will describe any changes or updates to the overall performance management system or the OMS and also communicate the expected levels of performance for each indicator for each center, outreach and admission provider, and career transition service provider described in § 686.1030 to the system.

Proposed § 686.1000(c), implementing sec. 159(f)(1) of WIOA, indicates that annual performance assessments based on the measures referenced in proposed paragraph (b) will be done for each center operator and other service providers, including outreach and admission providers and career transition providers. These annual assessments will include a review of the data in the OMS, a calculation of the annual performance ranking as described in proposed

§ 686.1070, and an analysis of the operator or service provider's success at meeting the expected levels of performance, including consideration of any factors influencing the performance outcomes such as disruption in the operations of the center, economic conditions, or other factors.

§ 686.1010 What are the primary indicators of performance for Job Corps centers and the Job Corps program?

Proposed § 686.1010 implements WIOA sec. 159(c)(1), which requires the use of the primary indicators of performance for eligible youth as described in sec. 116(b)(2)(A)(ii) of WIOA

for the Job Corps program and each center. Proposed paragraphs (a) through (f) are the primary indicators of performance for eligible youth as described in sec. 116(b)(2)(A)(ii) of WIOA. These measures of performance are the same as the primary indicators discussed in

proposed § 677.155. Though the indicators of performance are identified in various places throughout the WIOA proposed regulations, the indicators are the same and do not vary across the regulations.

§ 686.1020 What are the indicators of performance for Job Corps outreach and admissions providers?

Proposed § 686.1020 implements sec. 159(c)(2) of WIOA, which requires that the Secretary establish performance indicators and expected levels of performance on those indicators for recruitment service providers serving the Job Corps program. The performance management system and OMS will be updated to reflect the new performance measures for Job Corps outreach and admissions providers. Proposed paragraphs (a) through (d) are the indicators of performance as provided in sec. 159(c)(2) of WIOA.

§ 686.1030 What are the indicators of performance for Job Corps career transition service providers?

Proposed § 686.1030 implements sec. 159(c)(3) of WIOA, which requires that the Secretary establish performance indicators and expected levels of performance on those indicators for career transition service providers serving the Job Corps program. The performance management system and OMS will be updated to reflect the new performance measures for Job Corps Career Transition Service providers. Proposed paragraphs (a) through

(g) are the indicators of performance as provided in sec. 159(c)(3) of WIOA.

§ 686.1040 What information will be collected for use in the Annual Report?

Proposed § 686.1040 implements sec. 159(c)(4) of WIOA, which requires the Secretary to collect information and submit an Annual Report on the performance of each Job Corps center and the Job Corps program. The Department is including this proposed section so that the Job Corps community is made aware of the information that will be collected. Proposed paragraphs (a) through (p) specify the information required to be included by secs. 159(c)(4)(A)-(B) and 159(d)(1)(A)-(N) of WIOA. Proposed paragraph (q) reflects the information required to be included by sec. 159(h) of WIOA, and proposed paragraph (r) reflects the information required by sec. 159(i) of WIOA.

Proposed paragraph (s) states that the Secretary may collect and include additional information in the Annual Report that the Secretary determines is necessary. Any such information would be collected as part of the performance management system and identified in the annual guidance described in § 686.1000.

§ 686.1050 How are the expected levels of performance for Job Corps centers, outreach and admission providers and career transition service providers established?

Proposed § 686.1050(a) implements secs. 159(c)(1)-(3) of WIOA, which require that the Secretary establish expected levels of performance for Job Corps centers, outreach and admission providers, and career transition service providers, and the Job Corps program relating to each of the

primary indicators of performance described in §§ 686.1010, 686.1020 and 686.1030. In order to develop expected levels of performance for the primary indicators, the Department will first examine past performance specific to the new measures. Since several of the employment-related indicators are intended to utilize State wage records, this will involve a process of developing quarterly earnings specifications as well as developing an infrastructure to align WRIS data with Job Corps survey data at the center level. Expected levels of performance can more readily be developed for the credential attainment and skill gains indicators using past performance aligned to the timeframes required by WIOA. Job Corps will also continue to use a regression model to statistically adjust for local economic conditions and participant

characteristics at the center level similar to regression models used for other programs under WIOA. The Department anticipates that after implementation of the new primary indicators, there will be a period of at least 1 PY where baseline data are collected on each of the primary indicators and there is no expected level of performance in place. Once baseline data has been collected, the Department will begin to establish expected levels of performance.

Proposed paragraph (b) states that as provided in § 686.1000, the Secretary will issue annual guidance describing the national performance management system. This guidance will also communicate the expected levels of performance for each center and each indicator of performance for each outreach and admissions provider and each career transition service provider. This guidance will also describe how the expected levels of performance were calculated.

§ 686.1070 How are center rankings established?

Proposed § 686.1070(a) states that the Secretary will calculate the annual rankings of center performance based on the performance management system described in proposed

§ 686.1000. As described above in the explanation of proposed § 686.1000, Job Corps' OMS is a well-established measurement system within the Job Corps community that has been used to track performance of centers and service providers for many years, and it will be updated to reflect the new requirements of WIOA, including the new primary indicators of performance. It is designed to drive the system to meet programmatic goals, which under WIOA will be

established through the primary indicators of performance. As described above, the OMS will be updated to reflect the primary indicators of performance and may also include other measures that will drive the system towards attainment of the primary indicators or that provide more

detailed information about elements that make up the primary indictors that the Secretary believes are necessary to manage and evaluate the effectiveness of the Job Corps program.

Proposed § 686.1070(b) states that the Secretary will issue annual guidance that communicates the methodology for calculating the performance rankings for the year. This guidance will include any changes in the weighting of individual measures in the calculation. The Department expects to weigh measures reflecting the attainment of the primary indicators most heavily. However, the Department anticipates that there could be changes in weighting from year to year to address areas of concentration in the program. For example, if the Department's analysis of past years' data regarding the system's results on the primary indicator related to measurable skills gains indicates that students are achieving high levels of literacy gains but lagging on numeracy gains, the Department may increase the weighting of the OMS measure on numeracy gains to signal to operators that they need to put more emphasis on improving numeracy. The expected result would be that the increased focus on numeracy would lead to improved numeracy gains and a commensurate increase in the primary indicator related to measurable skills gains. The center rankings will reflect these efforts to push the system to continuous improvement of outcomes.

§ 686.1070 How and when will the Secretary use Performance Improvement Plans?

Proposed § 686.1070 implements sec. 159(f)(2) of WIOA, which sets out requirements for the circumstances under which the Secretary will use Performance Improvement Plans.

Proposed paragraph (a) provides that the Secretary will establish standards and procedures for developing and implementing performance improvement plans. Paragraph (a)(1) implements the requirement in sec. 159(f)(2) of WIOA, that when a center fails to meet expected levels of performance, the Secretary must develop and implement a performance improvement

plan designed to help the center improve its performance outcomes. Paragraph (a)(1)(i) establishes standards for when the Secretary will consider a center to have failed to meet the expected levels of performance on the primary indicators. The proposed paragraph states that a center will have failed to meet the expected levels of performance if the center is ranked among the lowest 10 percent of Job Corps centers and the center fails to achieve an average of 90 percent of the expected level of performance for all of the primary indicators. This is consistent with the methodology used to determine whether States have failed to meet the expected levels of performance on other programs under WIOA. Proposed paragraph (a)(1)(ii) establishes standards for when the Secretary will consider a center to have failed to meet the expected levels of performance on the primary indicators for PYs that occur prior to the implementation of the expected levels of performance on the primary indicators. The paragraph states that a center will have failed to meet the expected levels of performance if it is ranked among the lowest 10 percent of Job Corps centers and the center's composite OMS score for the PY is 88 percent or less of the year's OMS national average. This proposal is consistent with the Job Corps Performance Improvement Plan system planned for implementation in early 2015.

Proposed paragraph (a)(2) implements sec. 159(f)(3) of WIOA, which states that the Secretary may also develop and implement additional performance improvement plans that will require improvements for a Job Corps center that fails to meet criteria established by the Secretary other than the expected levels of performance. The Department expects to outline requirements for any such plans through subsequent guidance.

Proposed paragraph (b) implements the requirement in sec. 159(f)(2) of WIOA that the performance improvement plan require that action under the plan must be taken within 1 year of its implementation to address the issues that led to the center's failure to meet its expected levels of performance. The paragraph states that the plan will identify criteria that must be met for the center to complete the performance improvement plan. In addition, paragraph (b)(1) provides that the center operator must implement the actions outlined in the performance improvement plan. Proposed paragraph (b)(2) provides that if the center fails to take the steps outlined in the performance improvement plan or fails to meet the criteria established to complete the performance improvement plan after 1 year, the center will be considered to have failed to improve performance under a performance improvement plan detailed in paragraph (a). In that case, the center will remain on a performance improvement plan and the Secretary will take action as described in proposed paragraph (c). Paragraph (b)(2)(ii) implements sec. 159(f)(4) of WIOA, which provides that if a CCC fails to meet expected levels of performance relating to the primary indicators of performance specified in proposed § 686.1010, or fails to improve performance under a performance improvement plan detailed in paragraph (a) after 3 PYs, the Secretary, in consultation with the Secretary of Agriculture, must select an entity to operate the CCC on a competitive basis. Such competition will be held in accordance with the requirements at proposed § 686.310.

Proposed paragraph (c) implements secs. 159(f)(2)(A) through 159(f)(2)(G) of WIOA, which permit the Secretary to take specific actions to improve the performance of a center, as

necessary. These requirements are taken directly from the statute and this proposed paragraph retains the same requirements as those in the WIA regulations at 20 CFR 670.985. The Department notes that nothing in the statute or in these proposed regulations requires that the performance improvement actions be taken in any particular order or on a progressive basis. The Secretary will take any of the measures listed in sec. 159(f)(2) of WIOA that will lead to

improving performance of a center. Among these measures, the Secretary also reserves the right to close low-performing centers, pursuant to WIOA sec. 159(f)(2)(G).

J. ***Part 687 – National Dislocated Worker Grants***

Proposed part 687 implements provisions in sec. 170 of WIOA that authorize the Secretary to award discretionary funds to serve dislocated workers and other eligible individuals affected by major economic dislocations, emergencies, or disasters. The proposed regulations set forth the key elements and requirements for the statute's NDWGs. Additional guidance on NDWGs and the application requirements for these grants will be published separately.

The proposed regulations establish a framework that will enable eligible applicants to apply quickly for grants to relieve the impact of layoffs, emergencies, and disasters on employment in the impacted area and to meet the training and reemployment needs of affected workers and to enable them to obtain new jobs as quickly as possible. The proposed regulations call for early assessment of the needs and interests of the affected workers, through either rapid response activities, or other means, as well as an indication of the other resources available to meet these needs, to aid in the creation of a customer-centered service proposal. The early collection of information about affected workers will allow applicants to have an understanding of the needs and interests of the impacted workers to enable a prompt application for the appropriate level of NDWG funds. Early collection of

information also will facilitate the receipt of NDWG funds when the Secretary determines that there are insufficient State and local formula funds available. Early intervention to assist workers being dislocated is critical to enable them to access work-based learning opportunities and other types of training that lead to industry-recognized credentials, as appropriate, to help them find new employment in in-demand industries and occupations as soon as possible after their dislocation occurs.

§ 687.100 What are the types and purposes of national disclosed worker grants the Workforce Innovation and Opportunity Act?

Proposed § 687.100 describes the purpose of NDWGs, expanding upon the description provided in the WIA regulations at 20 CFR 671.100. Regular NDWGs provide career services for dislocated workers and other eligible populations where demand is unable to be met with formula funds or other sources. Disaster NDWGs, which were originally authorized under WIA to conduct clean-up and humanitarian assistance, are still authorized under WIOA; however, WIOA expands their availability by adding new qualifying events for Disaster NDWGs, such as serving workers who have relocated from an area in which a disaster has been declared, as discussed in §§ 687.110(b) and 687.180(b).

§ 687.110 What are major economic dislocations or other events which may qualify for a national dislocated worker grant?

Proposed § 687.110 describes the events that qualify for NDWG funding. Proposed § 687.110(a)(1) through (3) include substantially similar provisions to those that were contained in the WIA regulations; however, the terms “single site of employment” and “in a single local community,” which had been used to qualify the types of eligible layoff events, are not included in the proposed section. Experience under WIA has shown that a company’s total number of layoffs affects the local

and regional economy in the same way without regard to whether the layoffs occur at a single facility or at multiple locations. Proposed § 687.110(a)(4) describes a qualifying event added by sec. 170(b)(1)(D)(i) of WIOA, permitting the award of a NDWG when a higher than average demand for employment and training activities for dislocated members of the Armed Forces, dislocated spouses of members of the Armed Forces on active duty (as defined in 10 U.S.C. 101(d)(1)), or members of the Armed Forces described in proposed

§ 687.170(a)(1)(iii), exceeds State and local resources. Section 170(b)(1)(D)(i) of WIOA specifically limits the military spouses included in this analysis to "spouses described in sec. 3(15)(E) [of WIOA]." Under sec. 3(15)(E) of WIOA, these are spouses of members of the Armed Forces on active duty who are dislocated specifically because they have experienced a loss of employment as a direct result of relocation to accommodate a permanent change in duty station of the member of the military, or are unemployed or underemployed and experiencing difficulty in obtaining or upgrading employment. Implementing this exactly as stated in the statute would require applicants for these NDWGs to determine whether a specific subset of dislocated military spouses is driving the higher than average demand for services in an area.

This would cause an unnecessary burden on the NDWG applicants, and instead proposed

§ 687.110(a)(4) would only require applicants for these NDWGs to assess whether military spouses who are dislocated under any of the factors in sec. 3(15) of WIOA are contributing to the higher than average demand for services. The proposed provision also specifies that these spouses must be spouses of members of the Armed Forces on active duty, which implements the intent of this provision of WIOA while avoiding the unnecessary administrative hardship.

The Department intends to provide additional guidance about how higher than average demand

will be defined for purposes of this section. The Department is exploring definitions that may include veterans' unemployment in excess of the State's unemployment rate, Unemployment Compensation for Ex-service members (UCX) data, and other similar administrative data sources. The Department invites comments about the usefulness of relying on these and other data sources in determining how higher than average demand should be defined. Proposed

§ 687.110(a)(5) maintains the prerogative of the Secretary of Labor to provide NDWG funding for other events.

Proposed § 687.110(b) describes qualifying events for Disaster NDWGs. Proposed

§ 687.110(b)(1) provides, similar to the WIA regulation at 20 CFR 671.110(e), that disasters declared eligible for public assistance under the Stafford Act are qualifying events for Disaster NDWGs. The proposed paragraph also makes clear that outlying areas and tribal areas that receive a public assistance declaration also are eligible to apply for a Disaster NDWG. This is consistent with the intent and purpose of sec. 170 of WIOA, because these entities are both eligible for dislocated worker grants under WIOA and are eligible for public assistance under the Stafford Act. Therefore, it is logical that they would be eligible for Disaster NDWGs.

Proposed § 687.110(b)(2) and (3) describe the new events that WIOA establishes are qualifying events for Disaster NDWGs. As stated in sec. 170(a)(1)(B) of WIOA, eligible events for Disaster NDWGs now include an emergency or disaster situation of national significance that could result in a potentially large loss of employment, as recognized by the chief official of a Federal agency that has authority or jurisdiction over the Federal response for the emergency or disaster situation. Although such an event might not meet the requirements to receive a public assistance declaration from the FEMA, it still may be an event where NDWG funding may be needed. NDWGs

may be provided in this instance for activities that are determined to be appropriate by the Secretary. Proposed paragraph (b)(3) addresses situations where a substantial number of workers from a State, tribal area, or outlying area in which an emergency or disaster has occurred relocate to another State, tribal area, or outlying area. This would also be a qualifying event for a Disaster NDWG, according to secs. 170(b)(1)(B)(ii) and (d)(4) of WIOA. The addition of this type of event was informed by the mass evacuations that took place as a result of Hurricane Katrina, which caused massive flooding and damage along the Gulf Coast in 2005, resulting in evacuees settling in high concentrations in some other communities.

§ 687.120 Who is eligible to apply for national dislocated worker grants?

Proposed § 687.120 identifies which entities are eligible to apply for NDWGs. Proposed

§ 687.120(a) and (b) retain essentially the same requirements as in § 671.120 of the WIA regulations, but these proposed regulations clearly identify which entities may apply for Regular NDWGs and which may apply for Disaster NDWGs. Unlike § 671.120(b), proposed § 687.120 does not include a statement concerning the ability of private entities to apply for NDWGs for interstate projects, because sec. 170(c)(1)(B) of WIOA and proposed § 687.120(a)(5) provide for such applications. The proposed language, in contrast to its WIA counterpart, does not distinguish between interstate and intrastate projects, because from the Department's perspective the grantee/grantor relationship is between the Department and a single entity. In proposed

§ 687.120(a), the Department has specified that outlying areas, in addition to States, may apply for Regular NDWGs. In proposed § 687.120(b), the Department has specified that outlying areas and Indian tribal governments as defined by the Robert T. Stafford Disaster Relief and Emergency

Assistance Act, in addition to States, may apply for Disaster NDWGs.

§ 687.130 When should applications for national dislocated worker grants be submitted to the Department?

Proposed § 687.130 describes when applications for NDWGs may be submitted and retains many of the requirements found in the WIA regulations at 20 CFR 671.130. However, there are some key differences in the proposed regulations. Proposed § 687.130(a) identifies the conditions applicable to Regular NDWGs and underscores the importance that applications for Regular NDWGs must be submitted as soon as possible after the eligibility criteria are met and the necessary information to apply is available to the applicant. Timely submissions that comply with the requirements will help ensure that the needed resources are provided expediently.

Proposed § 687.130(b) identifies the conditions applicable to Disaster NDWGs and underscores the importance that applications for Disaster NDWGs must be submitted as soon as possible. Proposed § 687.130(b)(1) through (3) identify the events that trigger applications for Disaster NDWGs, and also emphasize the importance of submitting applications as soon as possible after the appropriate declarations or determinations have been made.

§ 687.140 What activities are applicants expected to conduct before a national dislocated worker grant application is submitted?

Proposed § 687.140 describes the activities to be conducted before an application for a NDWG is submitted. Proposed § 687.140(a) expands on the requirements found in the WIA regulations at 20 CFR 671.160. The proposed language, based in part on the Department's experience under WIA, requires applicants to identify the needs of the affected workers, and their interest in receiving services, either through Rapid Response activities or other means.

Under WIA, the Department learned that some individuals who could have benefited from receiving

ESs under a National Emergency Grant (NEG) ended up not being interested in receiving them. For example, some individuals chose to opt out of receiving services because they believed their previous employer was going to call them back to work, while others chose to forgo receiving employment and training services in order to find new employment on their own. The Department has found that the lack of information on needs and interest of affected workers have significantly impacted participant enrollment rates in the past, and in some cases, resulted in the return of funds outside the timeframe allowed for the funds to be obligated for other grants. Further, the proposed language expands the allowable data gathering methods that may be used, so that applicants are no longer limited to using only data obtained via Rapid Response interventions. This change allows for greater flexibility in obtaining this critical data.

Proposed § 687.140(b)(1) makes it clear that applicants for Disaster NDWGs must conduct a preliminary assessment of the clean-up and humanitarian needs in the affected areas. Proposed § 687.140(b)(2) requires applicants to have a mechanism in place to ascertain reasonably that there is a sufficient population of eligible individuals in the area and, if needed, eligible individuals outside the area to conduct the planned clean-up and humanitarian work.

Under WIA, there were a few instances where after NEGs were issued, a State was unable to conduct the work it had planned because it was unable to find eligible individuals to do the work. The Department recognizes that in the immediate aftermath of a disaster it is difficult to conduct a thorough assessment of the number of individuals that could be eligible to conduct the planned work. While the Department's proposed approach allows flexibility, it also ensures there is a process in place so that reasonable estimates of potential participant availability are made prior to submitting the application, so that the proper amount of funding may be provided.

§ 687.150 What are the requirements for submitting applications for national dislocated worker grants?

Proposed § 687.150 explains that the Department will publish additional guidance on the requirements for submitting NDWG applications. A similar approach was taken in the WIA regulations. Unlike the WIA regulations, however, the proposed section requires that a project implementation plan, which is currently required for all NEGs, be submitted post NDWG award. Under WIA, this requirement is included only in guidance. The project implementation plan includes more detailed information about project operations than is required for the initial application. This information allows the Department to provide grantees with targeted technical assistance, and to exercise appropriate oversight and monitoring over the NDWG award.

Additional information on what must be included in the project implementation plan, and the process for submitting it, will be included in future guidance.

§ 687.160 What is the timeframe for the Department to issue decisions on national dislocated worker grant applications?

Proposed § 687.160 implements sec. 170(b)(2) of WIOA, which establishes a 45-day timeframe for issuing determinations on NDWG applications. The proposed paragraph makes it clear that final decisions on NDWG applications will be issued within 45 calendar days of receiving an application that meets the requirements. Applicants are encouraged to engage the appropriate Regional Office so that timely technical assistance can be provided when developing NDWG applications to help ensure that the information provided in the application is sufficient.

§ 687.170 Who is eligible to be served under national dislocated worker grants?

Proposed § 687.170 provides information on participant eligibility for NDWGs, distinguishing between individuals who may be served under Regular NDWGs and those who may be served under Disaster NDWGs. In the WIA regulations at § 671.140, participant eligibility and

allowable activities were included in the same section; these two topics are being addressed separately in proposed §§ 687.170 and 687.180 for clarity. Proposed § 687.170(a) lists the specific populations that are eligible to be served under Regular NDWGs. This paragraph retains the provision from the WIA regulations at 20 CFR 671.140(a) that dislocated workers may be served. However, as discussed below, the definition of a dislocated worker was expanded under WIOA, thereby expanding the population that can be served with NDWGs.

Section 3(15)(E)(i)-(ii) of WIOA includes certain spouses of members of the Armed Forces on active duty in the definition of "dislocated worker." These spouses are considered dislocated workers, and therefore eligible for services under NDWGs, if they: (1) have

experienced a loss of employment as a direct result of relocation to accommodate a permanent change in duty station of the member of the Armed Forces; or, (2) are unemployed or underemployed and experiencing difficulty obtaining or upgrading employment.

WIOA also expanded upon the definition of a "displaced homemaker," recognized under both WIA and WIOA as a type of dislocated worker. Under sec. 3(16)(A)(ii) of WIOA, the definition of a displaced homemaker now explicitly includes a person who is a dependent spouse of a member of the Armed Forces on active duty whose family income is significantly reduced because of a deployment, a call or order to active duty, a permanent change of station, or the service-connected death or disability of the member, and who is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment. In addition to the expanded dislocated worker definition covering additional military spouses, dislocated members of the Armed Forces and other dislocated military spouses continue to be included in the definition of "dislocated workers" and therefore continue to be eligible for services under NDWGs, just as they were under WIA NEGs. Finally, sec. 170(c)(2)(A)(iv) of WIOA retains the eligibility provision found at sec. 173(c)(2)(iv) of WIA that members of the Armed Forces who were on active duty or full-time

National Guard duty who meet other specific requirements are an eligible population. These members of the Armed Forces and the requirements are specifically described in proposed § 687.170(a)(1)(iii).

As discussed earlier in this preamble, WIOA states that dislocated members of the Armed Forces, members of the Armed Forces described in proposed § 687.170(a)(1)(iii), and dislocated spouses of members of the Armed Forces on active duty may be served with NDWGs when there is a higher than average demand for employment and training activities from this population that exceeds State and local resources to provide them.

Proposed § 687.170(b)(1) retains many of the participant eligibility requirements for Disaster NEGs found in the WIA regulations at § 671.140(d), and also includes a new population authorized under sec. 170(d)(2)(D) of WIOA—individuals who were self-employed, but become unemployed or significantly underemployed as a result of the emergency or disaster. Proposed

§ 687.170(b)(2) implements sec. 170(b)(1)(B)(ii) of WIOA, discussed in proposed

§ 687.110(b)(3), which authorizes NDWG assistance for individuals who have relocated to another State, tribal area, or outlying area as a result of the disaster. This paragraph lists the relocated individuals who are eligible for assistance under these type of NDWGs, and also notes that in rare instances, humanitarian-related temporary employment will be available in the relocation areas. This is further discussed in proposed § 687.180(b)(2) and the corresponding preamble language. In those cases, the relocated individuals listed in proposed § 687.170(b)(2) would be eligible for that work.

§ 687.180 What are the allowable activities under national dislocated worker grants?

Proposed § 687.180 provides information on allowable activities; first, those allowable under Regular NDWGs; second, those allowable under Disaster NDWGs. Proposed § 687.180(a) lists the allowable activities for Regular NDWGs. These activities are essentially the same as those reflected in the WIA regulations at 20 CFR 671.140; however, consistent with WIOA, references to core, intensive, and training services have been changed to refer to career services. Additionally, the reference to trade-impacted workers under the NAFTA-TAA program contained in 20 CFR 671.140(c)(2) is not included in the proposed paragraph, since the NAFTA-TAA program no longer exists.

Proposed § 687.180(b) lists the allowable activities for Disaster NDWGs. Proposed § 687.180(b)(1) uses the same language as in the WIA regulations at 20 CFR 671.140(e), which authorizes temporary employment for humanitarian assistance and clean-up and repair of facilities and lands within the disaster area for which a Disaster NDWG is issued. This proposed paragraph also implements sec. 170(d)(1)(A) of WIOA, which requires coordination with FEMA and permits these activities to be performed in offshore areas related to the emergency or disaster. The addition of the language on offshore areas was informed by the Deepwater Horizon Oil Spill; the proposed paragraph allows clean-up and humanitarian assistance activities to take place beyond the land surface of the disaster area.

Proposed § 687.180(b)(1) implements sec. 170(d)(3) of WIOA; this paragraph allows employment of up to 12 months in the temporary jobs created under Disaster NDWGs, with the potential for an additional 12 months with Secretarial approval. Under sec. 173(d)(3) of WIA, only 6

months of disaster relief employment was allowed. Proposed § 687.180(b)(1) identifies employment and training activities as allowable under Disaster NDWGs. While the WIA regulations contained a comparable provision, individuals were only allowed to participate in employment and training services after they had completed the disaster relief employment component of the project. The proposed paragraph allows individuals enrolled in disaster relief employment under Disaster NDWGs to receive concurrent career and training services, as well as upon completion. Feedback received from grantees over the years demonstrates that individuals involved in clean-up and humanitarian assistance benefit from the opportunity to receive employment and training services. These services will help to improve the skills of these individuals and enhance their chances of obtaining employment once the temporary disaster relief employment is completed. However, because the primary purpose of Disaster NDWGs is to perform clean-up and humanitarian assistance, the Department will issue further guidance about the specific requirements regarding concurrent participation in career services.

Proposed § 687.180(b)(2) implements sec. 170(b)(1)(B)(ii) of WIOA, discussed in proposed § 687.110(b)(3), which makes individuals who have relocated to another State, tribal area, or outlying area as a result of a disaster eligible to receive services. Proposed

§ 687.180(b)(2) recognizes that although these individuals are eligible for temporary disaster relief employment, their employment, by virtue of their relocation, will most likely be limited to humanitarian work (if those services are warranted). If individuals relocate outside of the disaster area, they will most likely not be in the impacted geographic area to conduct clean-up work. It is the Department's expectation that, except in rare circumstances, the services provided to relocated individuals will be limited to career services.

Proposed § 687.180(b)(3), consistent with secs. 170(a)(1)(A)-(B) of WIOA, authorizes career services and/or disaster relief employment both where recognized by FEMA, or by another

Federal agency. Under sec. 173(a)(2) of WIA and the WIA regulations at 20 CFR 671.110(e) and 671.130(c), NEGs were only available where FEMA declared an area eligible for disaster-related public assistance.

Proposed § 687.180(b)(4) implements sec. 170(d)(1)(B) of WIOA, which states that disaster NDWG funds may be expended through public and private agencies and organizations that are engaged in disaster relief and humanitarian assistance projects.

§ 687.190 How do statutory and regulatory waivers apply to national dislocated worker grants?

Proposed § 687.190 describes how statutory and regulatory waivers apply to NDWGs.

To improve a grantee's ability to serve participants, or increase the effectiveness of NDWG projects, the Department may grant waivers to many statutory and regulatory requirements. See WIOA sec. 189(i)(3)(A), which identifies some limitations on the Secretary's waiver authority. Proposed § 687.190(a) and (b) retain essentially the same requirements found in the WIA

regulations at 20 CFR 671.150. A grantee requesting a waiver of the statutory or regulatory requirements in connection with an NDWG must submit its request either in the initial application for an NDWG, or in a subsequent modification request. A waiver issued under other WIOA provisions does not supplant this requirement.

§ 687.200 What are the program and administrative requirements that apply to national dislocated worker grants?

Proposed § 687.200 describes program and administrative requirements for NDWGs. It

retains essentially the same language included in the WIA regulations at 20 CFR 671.170.

Proposed § 687.200(b) authorizes the use of funds for temporary job creation in areas declared eligible for public assistance by FEMA or in areas impacted by a situation of national significance as designated by a Federal agency other than FEMA, subject to the limitations of sec. 170(d) of WIOA, and any additional guidance issued by the Department. Proposed

§ 687.200(b)(2) authorizes any remaining Disaster NDWG funds awarded under this part to be used by a grantee in the same PY the funds were awarded, in limited instances as determined by the Secretary or the Secretary's designee, for additional disasters or situations of national significance subject to the limitations of sec. 170(d) of WIOA. This flexibility will allow States, tribal areas, and outlying areas that experience a quick succession of disasters (such as those experienced by several Gulf States in 2005 that were devastated by the effects of Hurricane Katrina, and approximately 1 month later, were devastated by Hurricane Rita) to be able to modify their existing grant and quickly access existing funding.

K. ***Part 688 – Provisions Governing the YouthBuild Program***

1. Introduction

The Department wants to emphasize the connections across all of our youth-serving programs under WIOA including the WIOA youth formula program including boards and youth committees, connections to pre-apprenticeship and registered apprenticeship programs, and Job Corps centers across the country. WIOA is an opportunity to align and coordinate service strategies for these ETA youth training programs as well as align with our Federal partners that serve these same customers. WIOA also ensures that these programs are using common performance measures and standard definitions, which includes aligning the definitions for homeless youth, basic skills

deficient, occupational skills training and supportive services.

Additionally, the YouthBuild regulation aligns six new performance measures with the WIOA youth formula program.

WIOA affirms the Department's commitment to providing high quality education, training, and ESs for youth and young adults through YouthBuild grants by expanding the occupational skills training offered at local YouthBuild programs. YouthBuild programs can offer occupational skills training in in-demand occupations, such as health care, advanced manufacturing, and IT, as approved by the Secretary and based on local labor market information.

In addition to the changes to the program required by WIOA, the Department proposes several additional changes to the program, including proposed revisions to the duration of the restrictive covenant clause (as detailed in the preamble at § 688.730), clarifying eligibility criteria for participation, and describing qualifying work sites and minimum criteria for successful exit from the YouthBuild program. Beyond these regulations, the Department will

develop guidance and technical assistance to help grantees and the workforce development community operate highly effective YouthBuild programs.

2. Subpart A – Purpose and Definitions

§ 688.100 What is YouthBuild?

This proposed section describes the YouthBuild program. YouthBuild is a workforce development program that provides employment, education, leadership development, and training

opportunities to disadvantaged youth. The program also benefits the larger community by providing new and rehabilitated affordable housing, thereby decreasing the incidence of homelessness in those communities. The program recruits youth between the ages of 16 and 24 who are school dropouts and are either: a member of a low-income family, a youth in foster care, a youth who is homeless, a youth offender, a youth who is an individual with a disability, a child of an incarcerated parent, or a migrant youth.

§ 688.110 What are the purposes of the YouthBuild program?

This proposed section describes the purposes of the YouthBuild program. The overarching goal of the YouthBuild program is to offer disadvantaged youth the opportunity to obtain education and useful employment skills to enter the labor market successfully.

Construction training provides skills training and hands-on application of those skills. Youth also receive educational services that lead to a HSD or its State-recognized equivalent.

In addition to describing the Department's vision for the YouthBuild program, this proposed section describes the purposes of the YouthBuild program as found at WIOA sec. 171(a).

§ 688.120 What definitions apply to this part?

This proposed section provides definitions that are specific to the YouthBuild program in sec. 171(b) of WIOA. Other definitions that apply to the YouthBuild program are defined under sec. 3 of WIOA and § 675.300. Where appropriate and applicable the Department has aligned our definitions with the definitions within the regulations of WIOA youth, Job Corps, and WIOA adult

and dislocated workers programs.

These proposed definitions fall into several categories, which are described below: (1) definitions that remain unchanged from the WIA regulation at 20 CFR 672.110; (2) terms that were included in the WIA regulation but which have been amended; and (3) new definitions added to implement WIOA.

Definitions included in 20 CFR 672.110 which have been carried over to this part unchanged are: "Community or Other Public Facility," "Core Construction," "Eligible Entity," "Housing Development Agency," "Income," "Indian; Indian Tribe," "Low-Income Family," "Migrant Youth," and "Youth in Foster Care."

Definitions published in the WIA regulations at § 672.110 that the Department proposes changing include existing definitions for: "Homeless Individual" to include individuals considered homeless as defined in sec. 41403(6) of the Violence Against Women Act of 1994 and the inclusion of "Homeless Child or Youth" as defined under the McKinney-Vento Homeless Assistance Act; "Needs-Based Stipends" to "Needs-Based Payments" in order to be consistent with the term as used in § 688.320 below and to differentiate the term from the allowable program stipends described in § 688.320; "Occupational Skills Traning" to align with in-demand industries and an emphasis on post-secondary credentials; "Registered Apprenticeship" to align with the WIOA definition; and "Transitional Housing" to reflect the

amended definition under the McKinney-Vento Homeless Assistance Act as amended by S. 896 The Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act of 2009.

Proposed changes to this section also include the addition of new definitions that were not in WIA but are included in either sec. 3 or sec. 171(b) of WIOA. These are "Adjusted Income," "Applicant," "Basic Skills Deficient," "In-Demand Industry Sector or Occupation," "Individual with

a Disability," "Offender," "Qualified National Nonprofit Agency," "Recognized Post-secondary Credential," "School Dropout," "Secondary School," "Supportive Services," and "YouthBuild Program."

Finally, the Department proposes to include several new definitions not defined under WIA YouthBuild regulations § 673.110: "Construction Plus," "Exit," "Follow-Up Services," "Participant," and "Pre-apprenticeship."

In addition, the Department has removed several definitions that were included in the WIA regulations: "Alternative School," "Individuals of Limited English Proficiency (LEP)," "Partnership," "Public Housing Agency," and "Youth who is an Individual with a Disability."

The Department proposes to include the following definitions at § 688.120:

Adjusted Income: The Department proposes that the term ''adjusted income'' means that

with respect to a family, the amount of the income of the members of the family residing in a dwelling unit or the persons on a lease, after any allowable income exclusions. Per WIOA sec. 171(b)(1), this definition comes from sec. 3(b) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b).

Applicant: The Department proposes defining this as an entity applying for YouthBuild

funding as described at WIOA sec. 171(b)(2).

Basic Skills Deficient: This proposed definition comes from WIOA sec. 3(5) and the Department is adding it for ease of use. In assessing basic skills, YouthBuild programs must use assessment instruments that are valid and appropriate for the target population, and must provide reasonable accommodation in the assessment process, if necessary, for participants with disabilities.

Construction Plus: The Department proposes defining this as the inclusion of occupational skills training for YouthBuild participants in in-demand occupations other than construction. This definition is from TEGL 7-14 Guidance for Implementing the "Construction Plus" Component of the YouthBuild Program. The Department is adding this definition to the regulations to stress the importance of correctly implementing a high quality Construction Plus program and to refer grantees to TEGL 7-14.

Community Or Other Public Facility: The Department proposes defining this as those facilities which are either privately owned by non-profit organizations or publicly owned and publicly used for the benefit of the community. For publically owned buildings, examples include public use buildings such as recreation centers, libraries, public park shelters, or public schools.

Core Construction: The Department proposes defining this term to mean those activities

that are directly related to the construction or rehabilitation of residential, community, or other public facilities. These activities include, but are not limited to, job skills that can be found under the Standard Occupational Classification System (SOC) major group 47, and Construction and Extraction Occupations, in codes 47-1011 through 47-4099. A full list of the SOC's can be found at the Bureau of Labor Statistics (BLS) Web site, http://www.bls.gov/soc.

Eligible Entity: This proposed term describes the entities eligible to apply for funding under this part. This definition comes from WIOA sec. 171(b)(3).

English Language Learner: The Department proposes defining this term as a participant who has limited ability in reading, writing, speaking, or comprehending the English language, and whose native language is one other than English; or who lives in a family or community environment where a language other than English is the dominant language. This definition comes from WIOA sec. 3(21), which adopts the definition found at WIOA sec. 203(7).

Exit: For purposes of measuring performance under the performance measures described in § 688.400, the Department proposes to adopt the general definition of exit that is used in § 677.150 in order to align with the core programs generally and the youth formula program

specifically. For purposes of this definition, an exit from a YouthBuild program is either a successful exit under § 688.370 or an unsuccessful exit, which occurs when a participant leaves the program before completing the program. However, a participant is not considered to have unsuccessfully exited if they leave the program because of a documented death, health or medical reason, family care, being called to active duty in the military, or any other circumstance described by the Secretary.

Follow-Up Services: This proposed term describes the services provided to youth participants after program exit to ensure success in established outcomes, such as placement into post-secondary education and training or employment. The definition is based on the Department's experience in administering the YouthBuild program, and aligns with the WIOA youth formula program definition. By adding this definition, the Department intends to strengthen the emphasis on career pathways for YouthBuild participants. Follow-up services are critical services provided following a youth's exit from the program that help ensure the youth is successful in employment and/or post-secondary education and training as they progress along their career pathway. The Department will issue guidance and provide technical assistance regarding the services necessary to ensure the success of youth participants.

Homeless Individual: This proposed term comes from WIOA sec. 171(b)(4), which adopted the definition from sec. 41403(6) of the Violence Against Women Act of 1994 (42 U.S.C. 14043e-2(6))

Homeless Child Or Youth: This proposed term comes from WIOA sec. 171(b)(4) of WIOA and comes from sec. 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 1134a(2)).

Housing Development Agency: The Department proposes adopting the statutory definition of this term at WIOA sec. 171(b)(5).

Income: This proposed definition has been adopted from WIOA sec. 171(b)(6), which adopted the definition from the United States Housing Act of 1937 (42 U.S.C. 1437a(b)(2)).

In-Demand Industry Sector Or Occupation: The Department proposes to define this term as described at WIOA sec. 3(23).

Indian; Indian Tribe: These proposed terms are found in WIOA sec. 171(b)(7), which

incorporated the definitions from sec. 4 of the ISDEAA.

Individual With A Disability: This proposed definition was taken from sec. 3(25) of WIOA, which adopted the definition from sec. 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102).

Low-Income Family: This proposed definition implements the definition at WIOA sec. 171(b)(8), which adopted the definition of "low-income family" from sec. 3(b)(2) of the Housing Act of 1937. This definition applies not only to the eligibility of participants but also to the requirement that any residential units constructed or rehabilitated using YouthBuild funds must house homeless individuals and families or low-income families.

Migrant Youth: The Department proposes using the definition we used under the WIA YouthBuild regulation. The definition was adapted from Farmworker Bulletin 00-02, which relates to eligibility in the Migrant Seasonal Farmworker Youth program, and expands on the definition of "migrant seasonal farmworker" found in WIA.

Needs-Based Payments: This proposed term describes additional payments to participants beyond stipends which are necessary for an eligible youth to participate in the program.

Occupational Skills Training: The Department proposes to define this term as a course of study that provides specific vocational skills.

Offender: The Department proposes to define this term based on the definition found at WIOA sec. 3(38) and it includes both youth and adults who have been subject to any stage of the criminal justice process. The Department is proposing this definition in order to align YouthBuild's definition of offender with WIOA's formula for adult and youth programs.

Participant: The Department is proposing to define this term as an individual who, after an affirmative eligibility determination has been made, enrolls and actively participates in the program. Participants must be reported in the performance outcome measures. The term "participant" is necessary to define because § 688.400 requires grantees to report on the performance of participants in the program. This definition is designed to be consistent with the definition of participant in § 677.150, and it captures the same type of individuals that are considered participants in the core programs.

Pre-Apprenticeship: This proposed term describes a program or set of strategies designed to prepare individuals to enter and succeed in a registered apprenticeship program. This definition is

adopted from TEN 13-12 (http://wdr.doleta.gov/directives/attach/TEN/TEN_13-12_Acc.pdf), and is being used to ensure consistency with the definition used by the Department's Office of Apprenticeship. Per TEN 13-12, YouthBuild programs that receive funding from DOL are considered pre-apprenticeship programs.

Recognized Post-secondary Credential: This proposed definition explains that a recognized post-secondary credential includes an industry-recognized certificate or completion of an apprenticeship program, a license recognized by the State involved or Federal government, or an associate or baccalaureate degree. This definition has been adopted from WIOA sec. 3(52). the Department is using this to term to align with WIOA's formula adult and youth programs.

Registered Apprenticeship Program: The Department proposes to adopt the definition found at WIOA sec. 171(b)(10).

School Dropout: This proposed definition, adopted from WIOA sec. 3(54), describes a school dropout as an individual who is no longer attending any school and who has not received a secondary school diploma or its recognized equivalent.

Secondary School: The Department proposes to define this term as a nonprofit

institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State law, except that the term does not include any education beyond grade 12. This proposed definition adopts the definition at WIOA sec. 3(55), which cites to sec. 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

Section 3: The Department proposes to define this term as Section 3 of the Housing and Urban Development Act of 1968, as amended by the Housing and Community Development Act of 1992. The Department proposes adding this definition because YouthBuild is specifically identified in the U.S. Department of Housing and Urban Development (HUD's) Section 3 regulations. In Section 3, contractors are encouraged to work with YouthBuild programs and participants when working on Federally-funded HUD projects. Contractors and registered apprenticeship sponsors that hire YouthBuild graduates will increase the competitiveness of their proposals when bidding on HUD-funding construction projects.

Supportive Services: This proposed definition adopts the definition from WIOA sec. 3(59). In this definition, linkages to community services include but are not limited to services such as linkages to free legal aid to help with the expungement of criminal records, securing government identification, and linkages to organizations that provide youth the opportunity to develop their leadership skills through service to their respective community. This proposed definition identifies additional services that are necessary for youth to participant in this program.

Guidance regarding the provision of supportive services will be issued by the Department.

Transitional Housing: The Department proposes to define this term as housing provided to ease the movement of individuals and families experiencing homelessness to permanent housing within 24 months. This definition, per WIOA sec. 171(b)(11), is adopted from sec. 401(29) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360(29)).

Youth In Foster Care: This term means "youth currently in foster care or youth who have ever been in foster care." The Department is including it here as it was in WIA YouthBuild regulations.

Youthbuild Program: The Department proposes to define this term as any program that receives assistance under this section and provides disadvantaged youth with opportunities for employment, education, leadership development, and training through the rehabilitation (which for purposes of this section, must include energy efficiency enhancements) or construction of housing for homeless individuals and low-income families, and public facilities. This proposed term adopts the definition from WIOA sec. 171(b)(12).

3. Subpart B – Funding and Grant Applications

§ 688.200 How are YouthBuild grants funded and administered?

This proposed section describes how the Secretary uses funds authorized for appropriation under WIOA sec. 171(i) to administer YouthBuild as a national program under title I, subtitle D of WIOA. This section also notes that grants to operate YouthBuild programs are awarded to eligible entities through a competitive selection process, as required by WIOA sec. 171(c)(3). This proposed section retains the same requirements found at 20 CFR 672.200.

§ 688.210 How does an eligible entity apply for grant funds to operate a YouthBuild program?

This proposed section, implementing WIOA sec. 171(c)(1), generally describes the application process for the YouthBuild program.

§ 688.220 How are eligible entities selected to receive grant funds?

This proposed section, which implements WIOA sec. 171(c)(4), describes the selection criteria that will be considered by the Secretary when reviewing an application for funding. In addition to the criteria described in the law, the Department has added additional criteria in paragraphs (d), (e), and (g) and added a new criteria in paragraph (i).

In paragraph (d), the Department has added "counseling and case management" to the criteria described in sec. 171(c)(4)(D) because these are essential to the success of YouthBuild participants.

In paragraph (e), in addition to the criteria at WIOA sec. 171(c)(4)(E), the Department has clarified that applicants should train participants in sectors or occupations that are in demand locally

to help them achieve a positive employment outcome after their exit from the program.

Paragraph (g) adds to the criteria at WIOA sec. 171(c)(4)(I) by clarifying that the Department will also consider the extent to which the proposal provides for previously homeless families as well as individuals.

The Department has added a new criterion at paragraph (i) which looks at the applicant's ability to enter into partnerships with a variety of organizations and providers. Inclusion of this criterion is beneficial to the grantee and the participant. No single grantee is able to provide all of the services that a participant will need to succeed along her or his chosen career pathway.

However, programs that enter into various types of partnerships are able to provide participants with needed supportive services, increasing the likelihood that they will succeed both during and after their participation in the program.

Finally, paragraph (l) clarifies that the Department will apply varying weights to these factors as described in the FOA.

§ 688.230 What are the minimum requirements and elements to apply for YouthBuild funds?

This proposed section implements WIOA section 171(c)(3)(B) and describes the minimum requirements and elements that must be included in an application for YouthBuild funds.

In addition to the requirement at sec. 171(c)(3)(B)(iii), proposed § 688.230(c) requires applicants to describe their experience operating a program under Section 3 of the Housing and Urban Development Act of 1968. This requirement was added because the Department wants grantees to be aware that YouthBuild is specifically identified in HUD's Section 3 regulations. In Section 3, contractors are encouraged to work with YouthBuild programs and participants when working on

Federally-funded HUD projects. The criteria described in this proposed section will be included in the FOA.

The criteria described in this section emphasize strong connections to registered apprenticeship programs as a key component of the YouthBuild model, as well as connections to the one-stop system as a support for employer engagement, connecting with the Local Workforce Development Board youth services, and connecting to the network of standing youth committees at the local level. These connections will not only strengthen YouthBuild programs, but better enable them to provide a comprehensive spectrum of employment and training services to their participants.

Additionally, § 688.230(l) proposes, consistent with current practice, that the Department will consider an applicant's past performance under an award made by the Secretary of Labor to operate a YouthBuild program. This consideration will be based on the applicant's past Quarterly Performance Reports (ETA-9136) and Quarterly Financial Reports (ETA- 9130). Our past experience in administering the YouthBuild program has demonstrated that evaluating past performance allows the Department to conduct comprehensive analysis of the program's ability to meet the complicated requirements of YouthBuild. Additional details about this requirement will be included in the FOA.

Finally, proposed paragraph (v) authorizes the Secretary to include additional requirements in the FOA. This provision has been included to ensure that the requirements upon which the Secretary is making its determination are based on adequately and accurately judging the ability of the applicant in order to ensure the effective, efficient use of Federal funds and maximum benefit to program participants and the communities in which the proposed program will operate.

§ 688.240 How are eligible entities notified of approval for grant funds?

Consistent with sec. 171(c)(5) of WIOA, this proposed section describes how eligible entities are notified of the status of their respective grant application submitted for funding and the time frame for notification. This proposed section retains the same requirements found at 20 CFR 672.215.

4. Subpart C – Program Requirements

§ 688.300 Who is an eligible participant?

This proposed section sets out the participant eligibility requirements for enrollment in the YouthBuild program. It covers the required ages, education, income level, and other factors as well as exceptions. This proposed section implements the statutory eligibility requirement at WIOA sec. 171(e)(1).

While the language "its recognized State equivalent" in § 688.300(b)(1) is commonly understood to mean a GED, States can choose from several different equivalency tests that result in the attainment of a credential similar to the GED. Accordingly, the phrase "recognized State equivalent" as used in this section refers to the credential attained by passing any of the recognized equivalency tests.

While WIOA sec. 171(e)(1)(A)(ii) includes "a youth offender" as an eligible participant, proposed § 688.300(a)(3)(iii) permits both adult and youth offenders to participate in the YouthBuild program. The reason for the inclusion of adult offenders is twofold. First, some States categorize anyone who was convicted of a crime over the age of 16 an adult. Because individuals between the ages of 16 and 24 are eligible to participate in YouthBuild programs, not including adult offenders as

eligible participants would exclude those 16 and 17 year olds who have been convicted of a crime from participating in the program. Including adult offenders in this list of eligible participants ensures that these youth with a substantial barrier to employment will be able to participate in and benefit from the YouthBuild program.

§ 688.310 Are there special rules that apply to veterans?

This section identifies the relevant rules for determining income for veterans and priority of service for qualified veterans. These rules can be found in 20 CFR 683.230 and 20 CFR part 1010, respectively. This proposed section retains the same requirements found at 20 CFR 672.305.

§ 688.320 What eligible activities may be funded under the YouthBuild program?

This proposed section, which implements WIOA sec. 171(c)(2), outlines the activities that YouthBuild programs funded under this section may provide to program participants, including the allowable education and workforce training activities. Of note, sec. 171(c)(2)(a)(i) of WIOA codified the Department's decision to allow training in in-demand industries with the approval of the Secretary.

In addition to the activities allowed by the statute, the Department, in § 688.320, proposes to allow grantees to provide referrals to mental health services and victim services, such as referrals to domestic violence services or services to victims of gang violence. The Department

has decided to add this because it is not uncommon for our participants to enroll in our programs while at the same time dealing with the adverse effects of violence.

Finally, § 688.320(a)(7)(ii) specifies that in order to provide needs-based payments, a grantee must have a written policy which includes the information described to sure that such payments are proper and fairly distributed.

§ 688.330 What level of training qualifies a construction project as a qualifying work site under the YouthBuild program?

This proposed section provides requirements for YouthBuild grant programs on what is considered a qualifying work site for purposes of allowable construction activities under the YouthBuild program.

While the YouthBuild program model requires hands-on construction training that supports the outcome of increasing the supply of affordable housing within the communities that YouthBuild serves, some grant programs struggle to secure work sites that will offer the youth the hands-on construction skills training obtained from either building housing from scratch or through extensive rehabilitation of existing housing stock.

Determining whether a work site meets the criteria for providing substantial hands-on experience is complex. As referenced in TEGL 35-12, "Definition and Guidance on Allowable Construction Credentials for YouthBuild Programs," participants must study and pass testing in a number of modules, or skill areas, before one of the industry-recognized construction certification programs will accredit them. These modules include, for example, brick masonry, carpentry, painting, plumbing, and weatherization.

Per paragraphs (a) through (e) of this section, several criteria must be met in order for a work site to qualify as appropriate for construction skills training for YouthBuild participants.

The first is whether the worksite will provide the opportunity for hands-on training in at least two modules in a construction skills training program offering an industry-recognized credential.

The second is whether the completed work site will be used by a family or individual that meets the low-income threshold, as defined by the United States Housing Act of 1937 (42 U.S.C. 1437a(b)(2)). The third is whether the site provides substantial hands-on experience for youth. This means that the work site must include from-the-ground-up building experience (e.g., foundation, framing, roofing, dry wall installation, finishing, etc.) or a substantial level of rehabilitation (i.e., "a gut job"). Fourth, per § 688.730, all YouthBuild work sites must be built or renovated for low-income individuals or families and are required to have a restrictive covenant in place that only allows for rental or resale to low-income participants for a particular period of time. Last, all work sites must adhere to the allowable construction and other capital asset costs, as defined in TEGL 05-10, "Match and Allowable Construction and Other Capital Asset Costs for the YouthBuild Program," or subsequent or similar guidance issued by the Department related to allowable costs.

All grantees must use the required Work Site Description form (ETA-9143) in submitting proposed work sites for review and approval to and by the Department at the time of applying for grant funds. If after approval the grantee can no longer work at the approved construction site, the grantee must submit another ETA-9143 for the proposed new work site. The Work Site Description form requests specific information on the property for building or rehabilitation, the participants' construction activities, the funding source for the construction, and demonstration of ownership or access to the site.

By tying approved work sites with hands on training, the Department can ensure youth have the necessary hands-on training and experience in two or more of these modules or skill areas in order to qualify for industry-recognized credentials. The Department will issue guidance on the types of work sites that are acceptable for construction training for YouthBuild participants, and

describe the minimum construction activities that define work site training.

§ 688.340 What timeframes apply to participation?

This proposed section, implementing WIOA sec. 171(e)(2), provides that the period of participation for YouthBuild participants while enrolled in the program is not less than 6 months and not more than 24 months. This proposed section retains the same requirements found at 20 CFR 672.315.

§ 688.350 What timeframes must be devoted to education and workforce investment or other activities?

Implementing WIOA sec. 171(e)(3), this proposed section outlines the requirements for the minimum amount of time that participants must engage in workforce and educational training activities. This section also permits program participants to spend up to 10 percent of their time engaged in leadership development and community service activities, such as youth serving as crew leaders, participating on policy councils, organizing community clean-up projects, leading youth voter registration drives and organizing and hosting community anti-violence conferences.

§ 688.360 What timeframes apply to follow-up services?

This proposed section requires YouthBuild grantees to provide follow-up services for a period of 12 months after exit. These services are provided to program participants that have successfully exited the program to help them transition successfully into a post-secondary education program or employment.

The Department proposes to require 12 months of follow-up services to align the length of services with the youth formula program and the new performance measure requiring grantees to measure outcomes up to four quarters after exit. The types of services provided and the duration of services must be determined based on the needs of the individual and therefore, the type and intensity of follow-up services may differ for each participant.

Consistent with the youth formula program, a participant that is receiving follow-up services is considered to have exited the program, and therefore would be counted as having exited the program for the purpose of the performance measures described in § 688.400.

§ 688.370 What are the requirements for exit from the YouthBuild program?

This proposed section outlines the minimum criteria for successful exit from the YouthBuild program. One purpose of the YouthBuild program is for participants to receive practical skills and training that will allow them to successfully transition to employment or further education. As used in this section, a successful exit occurs when a participant has completed his/her training and is ready to transition out of the program.

Proposed paragraph (a) requires hands-on training because, based on our experience, participants that do not receive this training are less likely to transition out of the program successfully, thereby undermining one of the primary purposes of the program.

Proposed paragraph (b) requires each YouthBuild program to create exit policies that establish any additional minimum requirements that youth must meet in order to be considered to have successfully completed the program.

In the past, grantees have deemed participants to have exited the program, simultaneously

upon graduation, before all program services have been completed or delivered. This can result in lower performance outcome measures for the grantee and a lower post program success rate for participants. Participants do not have to exit at the moment of graduation. Exits can and should be based on the individual ongoing needs of the participant. Transition services can be

provided until the participant is ready for exit and may include college experience, subsidized summer jobs, internships, or other activities that will help the youth focus on post-program goals (for further details, please see § 688.320). It may also be best to have the youth already connected to a post-program placement before exit to ensure successful outcomes for the youth and successful performance outcome measures for the program. In addition, because follow-up services are only available to participants that have successfully completed the program, adding this section clarifies which participants are eligible to receive follow-up services

§ 688.380 What is the role of the YouthBuild grantee in the one-stop system?

WIOA sec. 121(b)(1)(B)(i) includes all of the programs authorized under title I of WIOA as a required partner in the local one-stop system. This proposed section implements that provision by requiring YouthBuild grantees to take all actions required of required partners described in sec. 121 of WIOA and 20 CFR part 678. The Department encourages its YouthBuild grantees to actively participate as a partner with the one-stop system. Because of the positive role that a local one-stop center can have on the operation of a local YouthBuild program and on the outcomes for YouthBuild participants, the local YouthBuild grantee should serve as the required partner of the one-stop system as required by sec. 121 of WIOA.

5. <u>Subpart D – Performance Indicators</u>

§ 688.400 What are the performance indicators for YouthBuild grants?

This proposed section describes performance indicators for the YouthBuild program, as required by WIOA sec. 171(f). Proposed § 688.400(a) through (f) are the six primary indicators as required by sec. 116 (b)(2)(A)(ii) of WIOA. These measures of performance are the same as the primary indicators discussed in proposed § 677.155. Though the indicators of performance are identified in various places throughout the WIOA proposed regulations, the indicators are the same and do not vary across the regulations. In addition to the six primary indicators, the Secretary may require YouthBuild programs to collect additional information on performance. If additional performance information becomes a requirement for YouthBuild grantees, they will be informed through a formal memorandum from the Department.

In calculating a program's performance, grantees must consider all of the participants that have exited the program, as that term is defined in § 688.120, not just those that have successfully exited the program under the policy described in § 688.370.

§ 688.410 What are the required levels of performance for the performance indicators?

This proposed section, implementing sec. 171(f) of the statute, provides a description of how levels of performance are developed for YouthBuild programs.

§ 688.420 What are the reporting requirements for YouthBuild grantees?

This section outlines the performance, narrative, and financial reporting requirements for

YouthBuild grantees and explains that any additional information on the reporting requirements will be included in guidance issued by the Secretary. This proposed section retains the same requirements found at 20 CFR 672.410.

§ 688.430 What are the due dates for quarterly reporting?

This section provides due dates for quarterly performance reporting under the YouthBuild program. This proposed section retains the same requirements found at 20 CFR 672.415.

6. Subpart E – Administrative Rules, Costs, and Limitations

§ 688.500 What administrative regulations apply to the YouthBuild program?

This proposed section applies the relevant administrative requirements and regulations applicable to all WIOA ETA programs to the YouthBuild program. This section requires each YouthBuild grantee to comply with the general administrative requirements found in 20 CFR part 683, except those that apply only to the WIOA title I-B program, the Uniform Administrative Requirements at 2 CFR parts 200 and 2900, 29 CFR parts 93, 94, and 98, and the nondiscrimination regulations at 29 CFR part 37.

The nondiscrimination regulations incorporated by this section at § 688.500(c)(2), 29 CFR part 37, broadly prohibit all forms of discrimination for WIOA title I programs, which include YouthBuild. In particular, 29 CFR 37.5 states that "[n]o individual in the United States may, on the ground of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and

for beneficiaries only, citizenship or participation in any WIOA title I- financially assisted program or activity, be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any WIOA title I-funded program or activity."

The regulations also require that grantees provide reasonable accommodations to youth who are individuals with disabilities, as found in 29 CFR 37.8. For grantees unsure of how to best accommodate youth who are individuals with disabilities in their program, the Department recommends that the grantees consult with the Job Accommodation Network [https://askjan.org/]

or call (800)526-7234 (Voice) (877)781-9403 (TTY], a free service of the Department's Office of Disability Employment Policy that provides employers with technical assistance on accommodating different disabilities.

In addition to prohibiting discrimination, YouthBuild grantees have positive requirements to ensure equal opportunity and prevent discrimination in their programs. YouthBuild grantees are required by 29 CFR 37.29 through 37.32 to disseminate an equal opportunity policy.

YouthBuild grantees also must ensure that they provide universal access to their programs,

including advertising the program in a manner that targets various populations, sending notices about openings in programs to community service groups that serve various populations, and consulting with community service groups on ways to improve outreach and service to various populations, as required by 29 CFR 39.42.

YouthBuild grantees also are required to comply with all generally applicable laws and implementing regulations that apply to the grantees or their participants. For example, for participants who are youth with disabilities and participate in secondary education programs, grantees must adhere to the administrative provisions of the Individuals with Disabilities

Improvement Act at 34 CFR 300.320 through 300.324, which require that grantees provide youth who are individuals with disabilities who enter the program with an appropriate transition plan corresponding to their individual needs.

Finally, proposed § 688.500(d), implementing sec. 171(e)(5) of WIOA, requires YouthBuild grantees to comply with relevant State and local education standards for their programs and activities that award academic credit or certify educational attainment.

§ 688.510 How may grantees provide services under the YouthBuild program?

This proposed section, implementing WIOA sec. 171(h), authorizes grantees to provide services directly or to enter into subgrants, contracts, or other arrangements with various public and private entities. This proposed section retains the same requirements found at 20 CFR 672.505.

§ 688.520 What cost limits apply to the use of YouthBuild program funds?

This proposed section implements WIOA secs. 171(c)(2)(C)(i) and (c)(2)(D), describing the limitations on the percentage of grant funds that a YouthBuild grantee can spend on

administrative costs and the rehabilitation or construction of a community or public facility. The definition of administrative costs can be found in 20 CFR 683.215.

§ 688.530 What are the cost-sharing or matching requirements of the YouthBuild program?

This proposed section provides that the cost-sharing or matching requirements applicable to a YouthBuild grant generally will be addressed in the grant agreement, and also describes the

requirements for several specific costs.

Regarding the use of Federal funds, this section explains that grantees must follow the requirements of 2 CFR parts 200 and 2900 in the accounting, valuation, and reporting of the required non-Federal share. Additionally, because inquiries about the allowability of using Federal funds as part of the cost-sharing or match amount is frequently asked by applicants, the regulations restate the prohibition on the use of such funds.

This proposed section retains the same requirements found at 20 CFR 672.515.

§ 688.540 What are considered to be leveraged funds?

This proposed section addresses the use of additional money, known as leveraged funds, to support grant activities. It explains that leveraged funds include costs that could be an allowable match but are in excess of the match requirement or costs that do not meet the cost- sharing and match requirements set forth in the Uniform Administrative Requirements. To be considered leveraged funds, they must be otherwise allowable costs under the cost principles which have been used by the grantee to support grant activity. For example, the Department would not allow a grantee to count toward the match requirement another Federal grant used by the grantee or subgrantee to support otherwise allowable activities under the YouthBuild program. However, the Department would consider such a grant a leveraged fund.

The amount, commitment, nature and quality of the leveraged funds described in the grant application will be considered as factors in evaluating grants in the FOA. The Department also will require grantees to report the use of such funds through their financial report and quarterly narrative

report.

This proposed section retains the same requirements found at 20 CFR 672.520.

§ 688.550 How are the costs associated with real property treated in the YouthBuild program?

This proposed section specifies which costs associated with real property are allowable and unallowable under the YouthBuild program. It explains that the costs associated with the acquisition of buildings to be rehabilitated for training purposes are allowable under the same proportionate share conditions that apply under the match provision at § 688.530, but only with prior grant officer approval. Costs related to construction and/or rehabilitation associated with the training of participants are allowed; however, costs associated with the acquisition of land are not.

§ 688.560 What participant costs are allowable under the YouthBuild program?

This proposed section permits payments to participants for work-related and non-work-related YouthBuild activities, supportive services, needs-based payments, and additional benefits as allowable participant costs.

§ 688.570 Does the Department allow incentive payments in the YouthBuild program?

This proposed section allows incentive payments to youth participants for recognition and achievement directly tied to training activities and work experiences. Grantees must outline in writing how they will use incentive payments. Proposed paragraphs (a) and (b) require that incentive

payments be provided in accordance with the organization's general policies governing

incentives and be related to the goals of the specific YouthBuild program. All incentive payments must be provided in accordance with the requirements in 2 CFR 200.

§ 688.580 What effect do payments to YouthBuild participants have on eligibility for other Federal needs-based benefits?

This proposed section explains the effect that payments to YouthBuild participants have on eligibility for other Federal needs based benefits. Under WIOA regulations at 20 CFR 683.275(c), allowances, earnings, and payments to individuals participating in programs under title I of WIOA are not considered as income for purposes of determining eligibility for and the amount of income transfer and in-kind aid furnished under any Federal or Federally-assisted program based on need other than as provided under the SSA (42 U.S.C. 301).

This proposed section retains the same requirements found at 20 CFR 672.535.

§ 688.590 What program income requirements apply to the YouthBuild program?

This proposed section provides that the program income provisions of the Uniform Administrative Requirements at 2 CFR parts 200 and 2900 apply to the YouthBuild program. This section specifies that the revenue from the sale or rental of buildings rehabilitated or constructed under the YouthBuild program to homeless individuals and families or low-income families, as specified in § 688.730, is not considered program income. The Department encourages grantees to use such revenue for the long-term sustainability of the YouthBuild effort.

This proposed section retains the same requirements found at 20 CFR 672.540.

§ 688.600 Are YouthBuild programs subject to the Davis-Bacon Act labor standards?

This proposed section requires that when a YouthBuild participant works on a project subject to Davis-Bacon labor standards, the Davis-Bacon labor standards, including prevailing wage requirements, apply to the hours worked on the site of the work.

The regulations implementing the Davis-Bacon Act contain a provision that allows for Department-certified training programs to pay less than the applicable prevailing wage rate to trainees when work is being performed on Federally-funded projects. As stipulated by 29 CFR 5.5(a)(4)(ii), "trainees" are not permitted to be paid less than the predetermined rate for the work performed unless they are employed under an individual registered in a program which has received prior approval, evidenced by a formal certification by DOL. However, YouthBuild program participants are not considered "trainees" and therefore must be paid the prevailing wage rate when they are performing work on Federally-funded projects.

This proposed section retains the same requirements found at 20 CFR 672.545.

§ 688.610 What are the recordkeeping requirements for YouthBuild programs?

This section sets forth that grantees must follow the recordkeeping requirements specified in the Uniform Administrative Requirements at 2 CFR parts 200 and 2900, and any additional requirements included in subsequently issued guidance or the grantee's grant agreement. This

proposed section retains the same requirements found at 20 CFR 672.550.

7. Subpart F – Additional Requirements

§ 688.700 What are the safety requirements for the YouthBuild program?

This proposed section requires YouthBuild grantees to comply with 20 CFR 683.280, which applies Federal and State health and safety standards to the working conditions under WIOA-funded projects safety requirements for YouthBuild programs, and the relevant child labor laws at 29 CFR part 570, governing the employment of children in hazardous occupations under the Fair Labor Standards Act. This proposed section is meant to protect the health and safety of YouthBuild participants on YouthBuild work sites, and to ensure that YouthBuild grantees comply with relevant child labor laws.

§ 688.710 What are the reporting requirements for youth safety?

This proposed section requires YouthBuild grantees to comply with the OSHA reporting requirements in 29 CFR part 1904 if a participant suffers a reportable injury while participating in the YouthBuild program. This proposed section retains the same requirements found at 20 CFR 672.605.

§ 688.720 What environmental protection laws apply to the YouthBuild program?

This proposed section requires grantees to comply with all environmental protection statutes and regulations, if applicable. This proposed section retains the same requirements found at 20 CFR 672.610.

§ 688.730 What requirements apply to YouthBuild housing?

In order to effectively ensure that one of the primary purposes of the YouthBuild program— to increase the stock of housing for homeless and low-income individuals and families— is met, this proposed section provides additional requirements, including a series of restrictions on the sale and use of units of housing built or renovated by a YouthBuild grantee.

This proposed section also requires a YouthBuild grantee to ensure that the owner of the property records a restrictive covenant on the property. The covenant must include the use restrictions in this section and must be for a term of 5 years. The Department requires the recordation of a restrictive covenant to ensure that YouthBuild funds are spent on projects that will benefit the intended beneficiaries of the program beyond the life of the grant.

Under the WIA regulations, grantees were required to ensure that the restrictive covenant was for a 10-year term. However, grantees have identified the 10-year restrictive covenant as a barrier to recruiting and maintaining construction partners. The current requirement of a 10-year covenant strictly binds partner organizations that may serve low-income populations but also desire flexibility regarding to whom they may sell the property in the future.

The term of the covenant was shortened in this proposed section in order to accommodate the difficulties faced by grantees while also ensuring that the purpose of the program continues to be met. Reducing the covenant period supports grantees in securing worksites where community-based housing partners and private property owners are reluctant to agree to a 10- year covenant

requirement. At the same time, a 5-year term ensures that housing built or renovated using YouthBuild funding remains available solely for the use of low-income and/or homeless individuals and families for a period beyond the grantee's 3-year period of performance. The Department specifically requests comments on the restrictive covenant requirement and our proposal to shorten the length of the covenant.

L. ***Part 651 – General Provisions Governing the Federal-State Employment Service System***

1. Introduction

In this proposed rule, the Department proposes to revise the ES regulations that implement the Wagner-Peyser Act of 1933. These include the provision of ESs to all job seekers with a particular emphasis on MSFWs. The proposed rule will update the language and content of the regulations to, among other things, implement amendments made by title III of WIOA to the Wagner-Peyser Act. In some areas, these regulations establish entirely new responsibilities and procedures; in other areas, the regulations clarify and update requirements already

established. The regulations make important changes to the following components of the ES system: definitions, data submission, and ETA standards for agricultural housing, among others.

2. Background

The Wagner-Peyser Act (Wagner-Peyser) of 1933 provided the Department the authority to establish a national ES system. The ES system provides labor exchange services to its participants and has undergone numerous changes to align its activities with broader national workforce

development policies and statutory requirements. WIOA expands upon the previous workforce reforms in the WIA and, among other provisions, identifies the ES system as a core program in the one-stop system, embeds ES State planning requirements into a combined planning approach, and increases requirements for the colocation of ES offices into the one-stop centers.

In 1974, the case National Association for the Advancement of Colored People (NAACP), Western Region, et al. v. Brennan et al, No. 2010-72, 1974 WL 229 (D.D.C. Aug. 13, 1974) resulted in a detailed court order mandating various Federal and State actions (referred to as the Judge Richey Court Order (Richey Order) in the remainder of this preamble). The Richey Order required the Department to implement and maintain a Federal and State monitoring and advocacy system and set forth requirements to ensure the delivery of ES services, benefits, and protections to MSFWs on a non-discriminatory basis, and to provide such services in a manner that is qualitatively equivalent and quantitatively proportionate to those provided to non- farmworkers. In 1980, the Department published regulations at 20 CFR parts 651, 653, and 658 to implement the requirements of the Richey Order. Part 653 sets forth standards and procedures for providing services to MSFWs and provides regulations governing the Agricultural Recruitment System (ARS), a system for interstate and intrastate agricultural job recruitment.

Part 658 sets forth standards and procedures for the administrative handling of complaints alleging violations of ES regulations and of employment-related laws, the discontinuation of services to employers by the ES system, the review and assessment of State agency compliance with ES regulations, and the Federal application of remedial action to State agencies. Also in 1980, the Department separately published amended regulations at 20 CFR part 654 providing agricultural housing standards for MSFWs.

In 1983, the Department published the regulations at 20 CFR part 652 that set forth standards and procedures regarding the establishment and functioning of State ES operations. Part 652 was

amended in 1999 and 2000 to reflect provisions of WIA. The proposed rule aligns part 652 with the WIOA amendments to the ES program, and with the WIOA reforms to the workforce system that affect the ES program.

3. Discussion of Proposed 20 CFR Part 651

20 CFR part 651 sets forth definitions for 20 CFR parts 652, 653, 654, and 658. The Department proposes to revise and update the definitions by eliminating outdated or obsolete definitions and by adding new definitions as needed. Throughout these parts it is generally proposed that the term "State MSFW monitor advocate" be replaced with the term "State monitor advocate" (SMA) because MSFW-related responsibilities are inherent parts of the SMA position and "State monitor advocate" is the commonly used term for the position. It also is proposed that the term "local office" be replaced with "employment service office" or "one-stop center" depending on the context. The Department also proposes that the definitions for farmwork, farmworker, and agricultural worker be streamlined through reference to the same

base line definition—farmwork. Also, the definition of farmwork is proposed to be revised by

drawing language from definitions used in other Department regulations and eliminating

references to the North American Industry Classification System (NAICS). Additionally, it is proposed that the definitions found at 20 CFR 652.1 be moved to 20 CFR 651.10 because it is the intention of part 651 to include Wagner-Peyser ES program definitions. It is proposed that the following definitions be added as they are provided in sec. 2 of the Wagner-Peyser Act, as amended by sec. 302 of WIOA, and pertain to the scope of definitions covered by § 651.10: Local Workforce

Development Board, one-stop center, one-stop delivery system, one-stop partner, training services, and workforce development activity. All of these adhere strictly to WIOA and Wagner-Peyser definitions. The Department notes that the WIOA amendments to the Wagner-Peyser Act also add the definitions of CEO, institutions of higher education, and workplace learning advisor, but these definitions are not proposed to be added to the regulatory text of § 651.10 because the terms are not used in parts 652, 653, 654, or 658. Finally, sec. 134 of WIOA merges the categories of core services and intensive services under WIA into career services. Since WIOA includes responsibilities for the Wagner-Peyser ES in the provision of career services, a definition for career services has been proposed to be added.

The definition of act is proposed to be added to § 651.10, moved from 20 CFR 652.1.

The definition of agricultural worker is proposed to be eliminated because the term is synonymous with the definition of farmworker described in this section. The proposed regulatory text directs the reader to the definition of farmworker.

The definition of applicant is proposed to be eliminated because the Department proposes

to replace the term with participant as defined in this section. This change is proposed to align with the language in WIOA and conform to reporting requirements which include all MSFWs who apply for and/or receive Wagner-Peyser Act services.

The definitions for Applicant Holding Office, Applicant Holding State, and Order Holding Office are proposed to be added because the terms are used throughout 20 CFR part 658 and adding the definitions clarifies the process for stakeholders. The proposed language in each definition derives from the purpose and scope defined in § 653.500. The inclusion of "U.S. workers" in these definitions helps to clarify that ARS is intended for the recruitment of U.S.- based workers only.

The definition of application card is proposed to be deleted as the document is generally no longer used as part of Wagner-Peyser Act services. ES offices have moved from a paper- based system to an online system and participants register for services in a variety of ways electronically.

The definition of career services is proposed to be added, as discussed above.

A definition of clearance order is proposed to be added to distinguish it from a job order.

The definition of clearance is proposed to be revised to clearance system and reflect secs.

3 and 7 of the Wagner-Peyser Act, as well as 20 CFR 652.3, which describes the basic labor exchange system as "a system for clearing labor between States." The updated language clarifies that this clearance system moves job seekers through an ES office or more than one such office, depending on the needs of the individual and the available job or jobs.

A revised definition of complaint is proposed to align with language in sec. 2 of the

Wagner-Peyser Act, as amended by WIOA sec. 302, to refer to "employment service" offices rather than "job service" (JS) offices. The revised definition specifies that complaints are representations or referrals of alleged violations of ES regulations, Federal laws enforced by the

Department's WHD or OSHA, or State or local employment-related laws. The Department proposes to add language in the definition clarifying that the complaints filed are alleging a

violation occurred, rather than confirming that a complaint represents an actual violation—which may be determined after the complaint is under investigation pursuant to 658 subpart F.

The definition of day haul is proposed to be deleted as the term is no longer relevant with

the proposed deletion of 20 CFR 653.105 and 653.106.

A revised definition of Employment and Training Administration *(ETA)* is proposed to conform to the description of ETA that is currently used.

A definition of employment-related laws is proposed to be added to conform to the proposed complaint procedures in 20 CFR part 658.

A definition of the term Employment Service (ES) is proposed to replace the definition for the term Job Service (JS) in order to conform to the terminology used in the Wagner-Peyser Act as amended by WIOA. For this reason, throughout these proposed regulations, the term Employment Service (ES) replaces the term JS.

A definition of Employment Service regulations (ES regulations) is proposed to replace the definition of JS regulations. The purpose of this change is to conform to language in the Wagner-Peyser Act, as amended by WIOA, and to include only relevant regulations. The proposed

definition now includes Federal regulations at 20 CFR parts 651, 652, 653, 654, and 658 and at 29 CFR part 75, and removes references to 20 CFR parts 620 and 621 because they are reserved, the reference to 29 CFR part 8 because *Employment Service* is not referenced in that part, and 29 CFR part 26 because it does not exist.

The proposed definition of farmwork will eliminate references to NAICS codes and include language aligning it with pertinent definitions in other Department regulations at 29 CFR 500.20 and 20 CFR 655.103(c). Drawing language from those definitions clarifies what is covered by the term farmwork and slightly expands the term to include certain occupations and activities covered by the Department's Office of Foreign Labor Certification (OFLC) and/or WHD. It is also proposed that the revised definition of farmwork fold in food "processing" work to align § 651.10 with OFLC regulations at 20 CFR 655.103(c)(1) which include food processing worker in the definition for agricultural labor or services. Including food processing work in the revised definition expands the scope of those who would be considered farmworkers. It also allows the Department to streamline the regulations by eliminating the separate definition of migrant food processing worker without reducing ES coverage or protections of such workers. The addition of food processing work to the revised definition of farmwork also expands the capability of Wagner-Peyser staff to provide services to more MSFWs. The Department will provide guidance to clarify what is considered food "processing." Fish farming is added to conform to sec. 167 of WIOA.

The reference to *"...*the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities" and "[t]his includes the raising of livestock, bees, fur-bearing animals, or poultry, the farming of fish, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market*"* is adapted from 20 CFR 655.103(c)(2) which references 29 U.S.C. 203(f), as amended (sec. 3(f) of the FLSA, as codified). The language "the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state," is adapted from 20 CFR 655.103 which references sec. 3121(g) of the Internal Revenue Code of 1954 (26 U.S.C. 3121(g)). The language "agricultural commodities means all commodities produced on a farm including, but not limited to, crude gum

(oleoresin) from a living tree, and the following products as processed by the original producer of the crude gum (oleoresin) from which derived: gum spirits of turpentine and gum rosin" is taken from OFLC 20 CFR 655.103 and aligns with WHD 29 CFR 500.20. Under the proposed definition, the activities and services currently included by reference to NAICS codes 111, 112, 115 will still be included whether explicit in the definition or through Department guidance, and those activities and services currently excluded by reference to NAICS codes 1152 and 1153 will still be excluded, excepting the proposed addition of fish farming. The NAICS reference to code 1125 will be covered through Department guidance as it relates to fish farming.

The Department anticipates the following impact of expanding the definition of farmworker and aligning it with the WHD and OFLC definitions: (1) State agency employees will more easily distinguish MSFWs for reporting purposes; (2) the proposed definition will also align with that of the proposed updated definition under 20 CFR part 685 for the NFJP; (3) more farmworkers will be

served as such under Wagner-Peyser because fewer people would be excluded under the expanded definition; (4) the Department will maintain consistency with the intent of the Richey Order to update data gathering systems to accurately reflect services delivered; and (5) the Department's data reporting will improve because under the different regulations, the Department's agencies will utilize basically the same definition for farmworker and therefore will accurately reflect the number of MSFWs identified across all programs. At the end of the proposed definition, the Department proposes to add a sentence to include any service or activity covered under 20 CFR 655.103(c) (definition of agricultural labor or services) and/or under 29 CFR 500.20(e) (agricultural employment) and/or through official published Department guidance, such as a TEGL, to allow for other current or future types of farmwork to be included.

A revised definition of farmworker is proposed to conform to the proposed definition of farmwork in this section.

A definition of field checks is proposed to be added to § 651.10 because the term is referenced in 20 CFR 653.503 but was previously undefined. Adding the definition clarifies the meaning for those who conduct or receive field checks.

A definition of field visits is proposed to be added to § 651.10 because the term is referenced in 20 CFR 653.108 but was previously undefined. Adding the definition clarifies the

meaning for those who conduct or receive field visits.

The definition of full application is proposed to be deleted because State Workforce Agencies (SWAs) generally do not utilize the full or partial application process. Instead, participants submit resumes or other information to register in the SWA network.

The definition of Governor is proposed to be added to § 651.10, moved from 20 CFR 652.1. Additionally, the Department proposes to add reference to the outlying areas in the definition to be clear that their chief executives are included when this part references a Governor.

The definition of identification card is proposed to be deleted as the document is no longer utilized as part of Wagner-Peyser services. SWAs have moved from paper-based to electronic-based systems and participants often log in using whatever information is required for that particular system.

A definition of interstate job order is proposed to be added to § 651.10 because it is referenced in the ES regulations but was previously undefined. Adding the definition clarifies the difference between interstate and intrastate job orders.

A revised definition of intrastate clearance order is proposed to conform to the

"employment service" terminology used in the Wagner-Peyser Act as amended by WIOA. Interstate or intrastate clearance order means an agricultural job order for temporary employment describing one or more hard-to-fill job openings, which an ES office uses to request recruitment assistance from other ES offices.

The definition of job bank is proposed to be deleted because the system, as it was previously defined, no longer exists. Now, most job openings are posted on internet-based systems.

The definition of job development is proposed to be slightly revised to refer to an "employment service office" rather than a "local office."

The definition of Job Information Service (JIS) is proposed to be deleted as resource centers replace JIS areas inside one-stop centers.

In the definition of job opening, it is proposed that the term applicants be replaced with the term participants to be consistent with the replacement term applicant in this section.

A definition of job order is proposed to be added to clarify the difference between a job order and a clearance order. The language for this definition is derived from 20 CFR 655.5.

The definition of job referral is proposed to be revised to include "or for a potential job" because the current definition is limited to the availability of a specific job and this revision opens job referrals to include situations that are responding to the possibility of employment.

A revised definition of labor market area is proposed to be revised to conform to the definition in sec. 3 of WIOA.

The definition of Local Office Manager is proposed to be revised to conform to the "employment service" terminology used in the Wagner-Peyser Act as amended by WIOA.

The definition of Local Workforce Development Board is proposed to be added to conform with sec. 2 of the Wagner-Peyser Act, as amended by WIOA.

The definition of migrant farmworker is proposed to be revised to conform to the updated definition of farmworker.

The definition of migrant food processing worker is proposed to be synonymous with the proposed definition of migrant farmworker.

Within the definition of *MSFW* it is proposed that "migrant food processing worker" be deleted to conform to the above proposed definition of migrant food processing worker. No reduction in coverage is intended by this change.

The definitions of one-stop center, one-stop delivery system, and one-stop partner are proposed to be added to § 651.10 to conform with sec. 2 of the Wagner-Peyser Act, as amended by WIOA.

The definition of O*NET-SOC is proposed to be revised to clarify that O*NET SOC codes are based on, but more detailed than, Standard Occupation Codes used across Federal

statistical agencies.

The definition of Order Holding Office is proposed to be added for reasons explained above.

The definition of onsite review is proposed to be added because these reviews are mandated under the Richey Order and are found throughout the regulations at 20 CFR parts 653 and 658. The language for the proposed definition is taken from 20 CFR 653.108(g).

It is proposed that the definition of outreach contact be added to § 651.10 for clarification. The language for the definition is taken from § 653.107.

The definition of partial application is proposed to be deleted because it is generally no longer used by ES offices or SWAs. Instead, participants submit resumes or other information to register in the SWA network.

The definition of participant is proposed to be added to replace the definition of applicant, as discussed above. This definition only applies to the Wagner-Peyser regulations at

parts 651, 652, 653, and 658. Proposed § 677.150(a) includes a separate, narrower definition of "participant" for purposes of performance accountability under sec. 116 of WIOA and 20 CFR part 677. Therefore, an individual who is considered a participant for the purpose of these Wagner-Peryser regulations would not necessarily be considered a participant for performance accountability purposes.

The definition of Program Budget Plan (PBP) is proposed to be deleted because the PBP is obsolete and the amendment to sec. 8 of Wagner-Peyser now calls for States to submit Unified or Combined State Plans.

The definition of RA is proposed to be deleted because the definition for Regional Administrator with the appropriate acronym is already described in this section.

The definition for rural area is proposed to be eliminated because the term is not used at 20 CFR parts 652, 653, 654, or 658 and is therefore not necessary to define in this section.

The definition of seasonal farmworker is proposed to be revised to mean an individual

who, over the past 12 months, has been employed in farmwork of a seasonal or other temporary nature. This proposed definition seeks to simplify and clarify the meaning of seasonal farmworker, and conform to the definitions used by the Department's WHD for seasonal agricultural workers under 29 CFR part 500, and the OFLC under 20 CFR part 655.

Additionally, the Department proposes to retain the 12-month period originally used in the definition of seasonal farmworker at 20 CFR 651.10 to minimize the time period that an individual could assert that he/she is a seasonal farmworker. The Department anticipates that this updated definition will more accurately reflect the total number of seasonal farmworkers that participate in the ES system. The Department also anticipates that ES staff will more easily be able to identify seasonal farmworkers for reporting purposes.

In the definitions of Significant MSFW Local Offices and Significant Bilingual MSFW Local Offices, the references to "local offices" are proposed to be replaced with "one-stop centers" because the WIOA amendment to the Wagner-Peyser Act requires colocation of Wagner-Peyser ESs in a one-stop center. Additionally, expanding the scope of the term will help States determine not only at which one-stop centers ESs must be sufficiently staffed to meet the needs of MSFWs, but also will identify one-stop centers that need to consider the needs of a significant number of MSFWs who do not speak English, in order to meet the requirements for making services accessible, as described in § 678.800. This also helps the Department conform to the intent of the Richey Order to serve MSFWs on a qualitatively equivalent and quantitatively proportionate basis.

The term bilingual is proposed to be replaced with

multilingual in the latter title to conform to the current trend of MSFWs speaking additional

languages other than English and/or Spanish. Also, the references to "applicants" are proposed to be replaced with "participants," to conform to the proposed changes in these definitions.

The definition of Significant MSFW States remains unchanged; however, the reference to

the Department organizational unit *ETA* has been replaced with the Department to be consistent

with other references throughout the section.

The definition of State Administrator is proposed to be revised to change "State

Employment Security Agency" to "State Workforce Agency" to reflect language used in WIOA title I.

The definition of State Workforce Agency (SWA) is proposed to be revised to conform to

sec. 2 of the Wagner-Peyser Act, as amended by title III of WIOA. The language "formerly State Employment Security Agency or SESA" is proposed to be deleted because the SESA terminology is outdated and no longer needs reference.

The definition of State Workforce Development Board (State Board) is proposed to be added to § 651.10, moved from 20 CFR 652.1 and updated from the former text, which defined State Workforce Investment Board.

The definition of Supply State(s) is proposed to be added to clarify its meaning under the ARS.

The definition of supportive services is proposed to be revised to conform to the definition for "supportive services" in sec. 3 of WIOA and to make clear that supportive services are also available to individuals participating in activities funded by the Wagner-Peyser Act.

The definition of tests is proposed to be deleted because the Department does not offer tests to ES participants.

The definition of training services is proposed to replace the definition of training, and the proposed definition references the services provided under WIOA sec. 134(c)(3).

The definition of transaction is proposed to be deleted because the term is not used in the relevant sections under this chapter.

A definition of unemployment insurance claimant is proposed to be added in this section to conform to the emphasis on serving this population in the WIOA amendments to secs. 7(a)(1) and (3) of the Wagner-Peyser Act.

The definition of vocational plan is proposed to be deleted because the Wagner-Peyser Act does not require the establishment of such plans for job seekers in the ES system.

The definition of WIOA is proposed to be added to § 651.10, moved from 20 CFR 652.1 and updated. Section 652.1 defines WIA.

The definitions of Workforce and Labor Market Information (WLMI) and Workforce Labor Market Information System (WLMIS) are proposed to conform to the provisions in sec.

308 of the Wagner-Peyser Act.

The definition for working days is proposed to be added to 20 CFR 651 because it is originally located in 20 CFR 653.501 and fits more appropriately under part 651.

A definition of work test is proposed to be added in this section to ensure that individuals who are eligible for UI benefits meet continued eligibility requirements with respect to work search. The Wagner-Peyser Act's requirements for administering the work test are further discussed in 20 CFR 652.210.

M. ***Part 652 – Establishment and Functioning of State Employment Services***

1. Introduction

The Wagner-Peyser Act of 1933 established the one Act ES, which is a nationwide system of public employment offices amended in 1998 to make ES part of the one-stop delivery system established under WIA. ES seeks to improve the functioning of the nation's labor markets by

bringing together individuals seeking employment with employers seeking workers.

The amended Wagner-Peyser Act furthers longstanding goals of closer collaboration with other employment and training programs by mandating colocation of ES offices with one-stop centers; aligning service delivery in the one-stop delivery system; and ensuring alignment of State planning and performance measures in the one-stop delivery system. Other new provisions are consistent with long-term Departmental policies, including increased emphasis on reemployment services for UI claimants (sec. 7(a)); promoting robust WLMI; the development of national electronic tools for jobseekers and businesses (sec. 3(e)); dissemination of information on best practices (sec. 3(c)(2)); and professional development for ES staff (secs.

3(c)(4) and 7(b)(3)).

2. Subpart A—Employment Service Operations

This subpart includes an explanation of the scope and purpose of the ES system, the rules governing allotments and grant agreements, authorized services, administrative provisions, and rules governing labor disputes. The proposed rule makes few changes in subpart A.

§ 652.1 Introduction.

This section introduces the Wagner-Peyser Act regulations, as amended by WIOA. Therefore, the Department proposes to delete paragraph (b) of § 652.1 and change the title of the section from “Introduction and definitions” to “Introduction.”

§ 652.2 Scope and purpose of the employment service system.

The Department proposes no changes in this section, which briefly describes the public labor exchange system.

§ 652.3 Public labor exchange services system.

This section explains the minimum services that must be offered by the public labor exchange system. The Department proposes adding paragraph (f) to align the title to the changes in WIOA and cite to sec. 134(c)(2)(A)(iv) of WIOA.

The Department proposes to align the Wagner-Peyser definitions of labor exchange services with those described under WIOA. The Department is seeking public comments on any issues or challenges in aligning labor exchange services described under WIOA with the labor exchange services provided by the ES.

Finally, the Department proposes to add to § 652.3(a) a clause to implement the emphasis the Act, as amended, places on national electronic tools (WIOA sec. 303(c), amending sec. 3(e) of Wagner-Peyser). The proposed clause, which would clarify that each State's obligation to assist jobseekers includes promoting their familiarity with the Department's electronic tools, is designed to improve customer access to labor exchange and workforce information.

The statutory provision recognizes the Department's longstanding efforts in this area. Since the 1990s, the Department has greatly expanded its national electronic tools to enhance short-term labor exchanges and support longer-term career aspirations for multiple audiences: jobseekers; employers; students; employment and training staff; educators and guidance counselors; Federal,

State and local policy-makers and planners; CBOs; librarians; and other individuals and entities that assist with the job search and career needs of Americans. The Department offers electronic tools through such Web portals as CareerOneStop (www.careeronestop.org); O*NET OnLine (www.onetonline.org) and O*NET's *My Next Move*

(www.mynextmove.org); and the WLMI provided through the BLS (www.bls.gov) and the U.S.

ETA's Labor Market Information Community of Practice

(https://winwin.workforce3one.org/page/home).

§ 652.4 Allotment of funds and grant agreement.

The Department proposes no changes in this section, which ensures that allotment information is publicly available with sufficient notice to allow public comment and to resolve complaints, and that grant agreements with the States meet all applicable statutes and regulations.

§ 652.5 Services authorized.

The Department proposes only minor changes conforming to WIOA in this section, State expenditures. Specifically, the proposed regulations substitutes "funds" with "sums" and substitutes "basic labor exchange elements" with "minimum labor exchange elements." Both changes were made to align with the Act as amended.

§ 652.8 Administrative provisions.

This section covers administrative matters, including financial and program management

information systems, recordkeeping and retention of records, required reports, monitoring and audits, costs, disclosure of information, and sanctions. The Department proposes to eliminate paragraph (d)(6) of this section which addressed amortization payments to States which had independent retirement plans in their State ES agencies prior to 1980. This paragraph is no longer applicable to any State and no State may revert back to a retirement system where these provisions apply. The Department is also proposing to change the record retention requirements for work applications and job orders from 1 year to 3 years in order to align with other Wagner- Peyser record retention requirements. Finally, the Department proposes to amend paragraph (f)

to require that financial audits be conducted under the same requirements that apply to audits under WIOA at 20 CFR 683.210.

§ 652.9 Labor disputes.

This section is designed to preserve the neutrality of the ES in the event of a labor dispute, such as a strike. The Department proposes no changes in this section, as WIOA made no amendments to the Wagner-Peyser Act relevant to this section.

3. Subpart B—Services for Veterans

This subpart merely refers the reader to the relevant regulatory section governing services to veterans.

§ 652.100 Services for veterans.

The Department proposes to amend this section to clarify that veterans receive priority of service for all Department-funded employment and training programs, as described in 20 CFR part 1010. The proposed amendment also clarifies that the Department's Veterans' Employment and Training Service (VETS) administers the Jobs for Veterans State Grants (JVSG) program and other activities and training programs which provide services to specific populations of eligible veterans.

4. Subpart C—Wagner-Peyser Act Services in a One-Stop Delivery System

Environment

This subpart discusses State agency roles and responsibilities, rules governing ES offices, the relationship between the ES and the one-stop system, required and allowable Wagner-Peyser services, universal service access requirements, provision of services and work test requirements for UI claimants, State planning, and State merit staffing requirements.

WIOA ensures the ES's key role in the one-stop delivery system by making it one of the core workforce programs. The ES must be a part of the State planning process, collocated with the one-stop delivery system, and must align its service delivery and performance measures with the rest of the one-stop system. This subpart addresses how the ES is to fulfill its mission of providing labor exchange services to job seekers and businesses in the one-stop delivery system.

§ 652.200 What is the purpose of this subpart?

The general purpose of this subpart is to provide guidance for implementing Wagner-

Peyser services within the one-stop delivery system.

§ 652.201 What is the role of the State agency in the one-stop delivery system?

This section emphasizes the leadership role played by the State in the one-stop system, including the delivery of Wagner-Peyser services. The Department proposes changing "Workforce Investment Board" to "Workforce Development Board," to be consistent with WIOA's terminology.

§ 652.202 May local Employment Service Offices exist outside of the one-stop service delivery system?

The Department is proposing to delete paragraph (b) of this section to align with WIOA's approach to colocation of services and prohibition against stand-alone employment service offices. Additionally, the Department proposes to change the text of what was paragraph (a) to provide a clear statement that ES offices must be collocated in one-stop centers, as required by WIOA. WIA strongly encouraged the colocation of ES and one-stop offices, but allowed some stand-alone ES offices under limited circumstances. Section 303(d) of WIOA modified sec. 3(d) of Wagner-Peyser to eliminate these exceptions and made colocation mandatory . Therefore, stand-alone ES offices are no longer permissible, as explained in §§ 678.310-678.315.

Colocation is intended to achieve several purposes: improved service delivery and coordination, less duplication of services, and greater access to services in underserved areas.

§ 652.203 Who is responsible for funds authorized under the Act in the workforce investment system?

The Department proposes no changes in this regulation, which stipulates that the State

agency is responsible for all Wagner-Peyser funds.

§ 652.204 Must funds authorized under theAct (the Governor's reserve) flow through the one- stop delivery system?

This section clarifies that the Governor's reserve funds may or may not be delivered through the one-stop system. The Department proposes to identify the services in sec. 7(b) of the Act that these funds must be used to provide. WIOA does not change these services; however, it is helpful to list the services in this section. As required by sec. 7(b) of the Act, the services are: performance incentives, supporting exemplary models of service delivery, and services for groups with special needs.

§ 652.205 May funds authorized under the Act be used to supplement funding for labor exchange programs authorized under separate legislation?

The Department proposes only minor nomenclature changes in this section, which explains under what conditions funds under secs. 7(a) or 7(b) of Wagner-Peyser may be used to provide additional funds to other programs.

§ 652.206 May a State use funds authorized under the Act to provide applicable "career services," as defined in the Workforce Innovation and Opportunity Act?

The Department is proposing in this section to align Wagner-Peyser service delivery with the service delivery changes in WIOA. Under WIA, non-training services were generally

identified as either "core" or "intensive" services. WIOA has removed the terms "core" and "intensive" and these services are now called "career services." The primary goal of the change to "career services" was to eliminate any sequencing of service requirements and to ensure participants had a broad array of services available to them based on a participant's employment needs.

Proposed § 678.430 organizes the WIOA career services into three categories: (1) career services that must be made available to all participants; (2) career services that must be made available if deemed appropriate and needed for an individual to obtain or retain employment; and

(3) follow-up activities. The proposed regulation respectively designates these categories as basic career services (§ 678.430(a)), individualized career services (§ 678.430(b)), and follow-up services (§ 678.430(c)).

Labor exchange services, which are the primary services provided by the ES, fall under the "basic career services" identified in proposed § 678.430(a) and listed in sec. 134(c)(2)(A) of WIOA. This section is designed to provide that Wagner-Peyser staff must use funds authorized by sec. 7(a) of the Act to provide the basic career services.

Individualized career services are identified in proposed § 678.430(b) and listed in sec.

134(c)(2)(A)(xii) of WIOA. These services involve more dedicated staff time to provide. These services are similar to intensive services and they may be provided as appropriate. The primary services the ES provides are labor exchange services, which are identified by the Department as basic career services. The Department proposes that the ES staff may also provide individualized career services, paid for from funds authorized under sec. 7(a) of the Act, in a manner consistent with the requirements of the Wagner-Peyser Act. Additionally, the Department wishes to clarify that the funds can be used to provide any of the individualized

services defined in proposed § 678.430(b) and sec. 134(c)(2)(A)(xii) of WIOA; there is no limit that the funds can only be used for particular individualized services. However, these Wagner- Peyser funds may not be used to provide training services.

The Department is seeking comments on how services provided by the ES can be more aligned with other services in the one-stop delivery system and ensure participants can receive seamless services from the ES to other programs under WIOA.

§ 652.207 How does a State meet the requirement for universal access to services provided under the Act?

This section provides States discretion in meeting universal access to service requirements, and explains the requirements, including how those services must be delivered. The section specifies that labor exchange services may be provided through self-service, facilitated self-help service, and staff-assisted services. The Department is proposing to include "virtual services" as a type of self-service. The Department recognizes the valuable virtual and online services that States provide through the ES, and seeks to include these services as self- services.

The Department also proposes changes in this section to tie it to the mandatory services described in § 652.206. The revised provision would replace the reference to core and intensive services with reference to career services made mandatory by an amended § 652.206.

§ 652.208 How are applicable career services related to the methods of service delivery described in this part?

This section explains how career services may be delivered to meet the requirements for access described in proposed § 652.207(b)(2). The Department proposes to include "virtual services" as a type of self-service provided by the ES, recognizing these important services

provided by States. The Department is also proposing to replace the reference to "core services and intensive services" with a reference to "career services" per WIOA.

§ 652.209 What are the requirements under the Act for providing reemployment services and other

activities to referred unemployment insurance claimants?

The Wagner-Peyser Act authorizes funding for States to deliver a wide array of labor exchange services to jobseekers. This regulation clarifies the required and allowable Wagner-Peyser services to UI claimants, as a subset of the broader ES beneficiary population.

WIOA added language to sec. 7(a) of the Wagner-Peyser Act reemphasizing the use of funds to support reemployment and related services to UI claimants. These changes strengthen the connectivity between the ES and the UI systems, and broaden opportunities for these systems to help UI claimants return to employment as quickly as possible. Coordination of labor exchange services and UI claimant services is essential to ensure an integrated approach to reemployment strategies. Wagner-Peyser funds may also be used to administer the work test for the State unemployment system for UI eligibility assessments. Additionally, the ES may provide UI claimants with referrals to, and application assistance for, education and training resources and programs as appropriate. Such resources include those provided through the Higher Education Act and State-specific educational assistance programs, veterans' educational assistance programs, WIOA education and training programs, and VR services.

The Department proposes two types of changes in § 652.209: one to clearly require services to UI claimants, and the other to implement new statutory provisions. The proposed text deletes the existing § 652.209(a) language that services must be provided "to the extent funding is available," because it is implied and the Department encourages reemployment assistance to UI claimants.

The proposed text includes in § 652.209(b)(2) a reference to "conducting eligibility assessments" to conform with sec. 7(a)(3)(F) of the Wagner-Peyser Act, as amended by WIOA, and includes a requirement that where applicable, UI claimants must be registered for ESs in accordance with the UC law of the State with which they file their claim. The States may use Wagner-Peyser

funds to pay for eligibility assessments, which is a required activity that must be made available when appropriate.

Additionally, in § 652.209(b)(3) the Department proposes to require that States provide referrals and application assistance to UI claimants, consistent with the new statutory language in sec. 7(a)(3)(G) of the Wagner-Peyser Act and includes a reference to the Post-9/11 GI Bill which staff may also refer participants to as well as other veterans educational assistance.

§ 652.210 What are the Act's requirements for administration of the work test, including eligibility assessments, as appropriate, and assistance to unemployment insurance claimants?

This section clarifies the requirement for administration of the work test to UI claimants.

The proposed changes provide more specificity about required services.

The Department proposes to include a reference to "conducting eligibility assessments" to conform with sec. 7(a)(3)(F) of the Wagner-Peyser Act. The States may use Wagner- Peyser funds to pay for eligibility assessments, which are a required reemployment activity that must be made available when appropriate. Proposed new language was also added to § 652.210(b)(3) to ensure that ES staff provide information about UI claimants' ability or availability for work, or the suitability of work offered to them, to UI staff. Sharing such information with UI staff will help accelerate claimants' return to employment.

§ 652.211 What are State planning requirements under the Act?

The Department is proposing to remove the planning provisions of this part of the regulation, including the text in §§ 652.211 through 652.214, because the ES is a core program under WIOA and falls under both the unified and combined planning requirements. This section has been amended to simply provide a citation to the State planning requirements under WIOA.

§ 652.215 Do any provisions in the Workforce Innovation and Opportunity Act change the requirement that State merit staff employees must deliver services provided under the Act?

This section stipulates that only State merit staff may provide Wagner-Peyser services. The only change proposed in this section is to change "WIA" to "WIOA" in the section question; the remainder of the text has not changed from the existing regulation. The Department has followed this policy since the earliest years of the ES, in order to ensure minimum standards for the quality of the services provided. A 1998 U.S. District Court decision, *Michigan v. Herman*, 81 F. Supp. 2nd 840 (http://law.justia.com/cases/federal/district-courts/FSupp2/81/840/2420800/) upheld this policy. State merit staff employees are directly accountable to State government entities, and the standards for their performance and their determinations on the use of public funds require that decisions be made in the best interest of the public and of the population to be served. State merit staff meet objective professional qualifications and provide impartial, transparent information and services to all customers while complying with established government standards.

§ 652.216 May the one-stop operator provide guidance to State merit staff employees in accordance with the Act?

This section clarifies that ES staff may receive guidance from a one-stop operator about the provision of labor exchange services, but that all personnel matters remain under the

authority of the State agency. The only change proposed in this section is to add a reference to proposed § 678.500, which provides the requirements for the local MOU. The Department seeks comment on whether any other changes are needed to allow the one-stop operator to ensure the efficient and effective operation of the one-stop center.

5. Subpart D—Workforce and Labor Market Information

Secretary of Labor's role concerning the Workforce and Labor Market Information

System (WLMIS). The Wagner-Peyser Act, as amended by and integrated with WIOA,

envisions a robust WLMIS that is a critical underpinning for a wide array of workforce functions, including: (1) supporting State and regional planning of workforce strategies that provide a pipeline of workers with in-demand skills and drive economic growth and development; (2) delivery of quality labor market and career information that enables workforce professionals to provide quality career counseling; and (3) enabling the workforce system's customers to make informed career and service delivery choices. New provisions in Wagner- Peyser provide for a collaborative process, led by the Secretary of Labor in partnership with Federal agencies, the newly created Workforce Information Advisory Council (WIAC), and States, to develop and implement a strategic plan that continuously improves the labor market and workforce information available through the workforce system. The Act describes certain key components of the WLMIS and

commits the Secretary of Labor to oversee and ensure the competent management of the system.

Wage records are a critical data source for WLMIS. When combined with data from other sources, wage records produce a wide array of labor market information used to inform economic development, support career counseling, identify training needs, inform industry sector workforce strategies, and assist with other facets of a job-driven workforce system.

For example, through agreements with States, wage records are used to produce the following aggregate reports and data that support the objectives listed above:

- The United States Census Bureau's Longitudinal Employer-Household Dynamics Program including the:
    - Quarterly Workforce Explorer, that provides worker residence and work place location data and critical employment and business related data including hiring, worker separations, and turnover rates, at State, county, metro and Workforce Development Board areas;
    - OnTheMap, that provides geographic information system (GIS) capabilities to map worker origin and destination information on detail map overlays in customized geographic areas at a Census block level; and
    - OnTheMap for Emergency Management tools, that provides GIS capabilities to map natural disasters including fire, flood, and storm and the impact on workers and businesses in customized geographic areas at the Census block level area.
- The DOL's Bureau of Labor Statistics Quarterly Census of Employment and Wages, which provides a complete count of employment and wages, classified by industry and based on

quarterly reports filed by employers for over 9 million establishments subject to unemployment insurance laws.

Continuous improvement, in part through consultation. The Act requires the Secretary of Labor to oversee, and the States to pursue actively, the "continuous improvement" of the WLMIS.[3] The Act, throughout, describes components of the system and ways in which the Secretary and the States must act to discharge their duties under the Act, including their duties related to "continuous improvement." Proposed § 652.300(a) is a general statement implementing this requirement. It provides, as does the Act, that the Secretary must oversee the development, maintenance, and continuous improvement of the WLMIS. The reference to Wagner-Peyser sec. 15 simply signals the section where the WLMIS is defined; the provision does not mean to state that sec. 15 is the only section where the duty of continuous improvement is created.

[3] Based on internal Department of Labor data. This figure includes the 50 States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

Proposed § 652.300(b) implements the Secretary's more specific duties with regard to the WLMIS, as they are described in Wagner-Peyser sec. 15(b)(2). The proposed regulation closely tracks the statute with respect to duties related to collection, analysis, and dissemination of workforce and labor market information. These include, for example, the duty to eliminate gaps and duplication in statistical undertakings. The Act also identifies certain activities that should be considered to improve data sources. For example, sec. 15(b)(2) requires the Secretary, to ensure that data collected is consistent with appropriate Bureau of Labor Statistics standards and definitions and

understandable to users of such data; and to develop consistent procedures and definitions for use by States in the collection of data. Earlier, in sec. 15(a)(1)(E), the Act requires that the WLMIS include "procedures to support standardization and aggregation of data from administrative reporting systems."

Recognizing the breadth of these and other requirements it imposes on the Secretary, the statute—at sec. 15(b)(2)—establishes an expectation that the Secretary will discuss and fulfill the requirements in active collaboration with the WIAC, Federal agencies, and States. Proposed § 652.302(b) incorporates this consultation requirement, while reserving our authority to consult with other stakeholders. To the extent that the data and tools used in the context of the WLMIS are owned by other Federal agencies, such as LEHD data which is owned by the Census Bureau subject to the authority of title 13 of the U.S. Code, the Secretary of Labor will work collaboratively with the owners of such data or data tools to coordinate the use of those tools with the WLMIS and to identify potential enhancements, but the Secretary of Labor has no direct authority with regard to those tools.

Proposed § 652.300 works in conjunction with certain amendments to 20 CFR part 651.

In order to clarify the Secretary's jurisdiction with respect to the Employment Service and related workforce systems—in particular, with respect to responsibilities related to "continuous improvement," performance assessment, and collection and management of information—the Department proposes new regulatory definitions for "Workforce and Labor Market Information" (WLMI) and "Workforce and Labor Market Information System" (WLMIS). Those proposed definitions appear in part 651.

Definition of "wage record." The proposed definition of WLMI that appears in part 651

lists numerous components, including "wage records." The Wagner-Peyser Act does not define "wage records." To clarify the Secretary's responsibilities with respect to that component of WLMI, however, the Department proposes to define "wage records" in a new section under part 652, § 652.301.

Proposed § 652.301 defines "wage records" for purposes of the Wagner-Peyser Act, including amendments to Wagner-Peyser relating to the WLMIS. The Department proposes to define "wage record," for these purposes, as records that contain "wage information" as defined in the Department regulations at 20 CFR part 603. Part 603, among other things, implements the requirements of the Social Security Act governing the now-established Income and Eligibility Verification System (IEVS). Federal law requires each State participating in the Federal-State unemployment compensation (UC) program to have in place an IEVS through which it

exchanges information with certain Federal agencies to help determine applicants' eligibility and amount of benefits for UC and several Federal financial assistance programs. (Social Security Act (SSA) secs. 303(f), 1137; 20 CFR 603.20-603.23.)

As part of its IEVS, every State must collect certain information—including "wage information" as defined in 20 CFR 603.2(k) and referred to here as "wage records"—from applicants for these programs, employers in the State, or relevant State or Federal agencies. (SSA sec. 1137.) In the context of establishing confidentiality requirements for State UC data, the Federal regulation at 20 CFR 603.2(k) defines "wage information" to mean information in the records of a State UC agency, and information reported under provisions of State law that meets the requirements of an IEVS, that may fall into any one of three categories: (1) "wages paid to an individual"; (2) the

individual's SSN(s); and (3) the name, address, State, and FEIN of the employer that paid the wages. (20 CFR 603(k)) Normally, a State collects this information through the quarterly "wage reports" employers file with the State (referred to in 20 CFR 603.2(j) and SSA sec. 1137(a)(3)). States may, based on their need, require employers to report additional data—beyond these three categories—in their wage reports, whether for

unemployment insurance purposes or for other purposes. It is the combination of these data collections that are referred to, broadly, as "wage records."

The new, proposed definition of "wage records" in § 652.301 helps meet the legislative intent for consistency by standardizing, the definition of "wage records" across regulations governing WIOA activities, Wagner-Peyser activities, and disclosure of confidential UC information. Part 603—which uses the term "wage information" is the basis for the definition of "wage records" in proposed § 652.301—in part serves to allow States to disclose specific

confidential wage information to help meet Federal reporting requirements for certain programs

and activities funded under WIOA and Wagner-Peyser. As proposed, the definition in § 652.301 is also consistent with the definition of "quarterly wage record information" under 20 CFR 677.175,[4] which requires States to use essentially the same data elements in "wage records" to

formally assess their performance for purposes of performance reporting. (For additional explanation of the relationship between these three sections, and the distinction between the provisions authorizing State use of certain wage data and those authorizing States to disclose

essentially the data for purposes of Federally-required performance reporting, see the Department's proposal to amend its regulations at 20 CFR part 603, accompanying this proposal to amend the Wagner-Peyser regulations.)

explains how the Secretary's responsibilities concerning the WLMIS apply to the wage record component of WLMI. That is, the proposed regulation reflects how the Department would apply the broader Wagner-Peyser expectations for improvement of labor market data sources, including those related to consistency and standardization, to one specific source – wage records.

Proposed § 652.302(b) would clarify that pursuant to his/her responsibility to oversee the development, maintenance, and continuous improvement of the WLMIS, including the numerous duties set forth in the Act and restated throughout this preamble, the Secretary will seek to develop standardized definitions of the data elements in wage records, and improved processes and systems for the collection of and reporting of wage records. As proposed, this provision would authorize the Secretary to develop common data definitions and standardized reporting formats that are consistent across States.

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[4] Ibid.

Proposed § 652.302(a) would work in conjunction with the proposed definitions of WLMI and WLMIS in part 651 to clarify that wage records are, in fact, included in and source data for

WLMI.

Consistency of wage records. On the matter of wage records, a number of areas have, in recent years, required policy discussions between the Department and States and other stakeholders. Of these discussions, the one on consistency has gained momentum.

State wage records today, while they are a critical component of the WLMIS, suffer from inconsistencies that impede better management of WLMI, and of the ES more broadly. Wage records have always been a critical data source for administration of the UI program as well as other Federal programs, providing information that supports eligibility determinations and identification and reduction of improper payments. Wage records have increased importance today because States are required to use them to evaluate State performance of the workforce system and education and training providers. Additionally, wage records play a key role in Federal evaluations of the workforce system's programs. The expanded use of wage records for such a wide range of purposes requires consistency and quality of the data in order to maximize its use.

Regrettably, such consistency is lacking. The wage data employers must report on their quarterly wage reports to their State and the formats they must use to report it vary, State-by- State. While employers filing wage reports described in Federal regulations at 20 CFR 603.2(j) must, at a minimum, report the three data elements described in 20 CFR 603.2(k), State law may require them to report additional elements. And because States differ in how they define certain data elements—including the three elements listed in § 603.2(k)—different States may prescribe different reporting formats for the same data elements. This means that the same type of data (employee SSN, employee name, employee address) may look different, from State to State, when placed on the form. For example, some States only require the first several numbers of workers'

SSN. Such differences in State reporting requirements, and the variation they generate in the type of data and the format of data collected, set up a significant barrier to data quality and data consistency. They make it hard for data users to effectively match wage records across the States. This interferes with the effective and efficient measure of performance, program evaluation, income verification under sec. 1137 SSA, and detection of improper benefits payments in multiple Federal programs.

Consultations with stakeholders over the years, as well as our own, longstanding program experience, lead the Department to believe that adoption of standardized definitions of data elements, and processes and systems for collecting and reporting wage records across all States, could greatly enhance the usability of the wage records and the ability to easily merge the data they contain with other data sets. Standardized definitions, collection processes, and systems also could reduce employer burden, given that multi-State employers and their third-party administrators now have to report wages to States in many different formats. With such enhancements, State wage records would contain data that have the potential to create more comprehensive and powerful workforce and labor market information. Such an approach would also help implement the statute's requirement for consistency.

Other Federal statutes support making significant improvements in wage records as a data source. A number of Federal statutes now place emphasis on wage records and data standardization. WIOA and the Middle Class Tax Relief and Job Creation Act of 2014, for example, require the Department to make the labor market data it oversees or generates, even more consistent and meaningful. WIOA emphasizes the use of wage records for performance and

evaluations of the workforce system. The Job Creation Act focus on data standardization.

Section 2104 of the Job Creation Act requires the Secretary to promote data exchange standardization through regulation in the delivery of the UI program, including as it relates to supporting the reemployment of unemployed workers. Data exchange standards include use of interoperable standards; use of widely accepted, non-proprietary, searchable, and computer readable formats; and use of existing non-proprietary standards, such as the eXtensible Markup Language. A key component of data exchange standardization is ensuring that the data the States are sharing is consistent. As addressed above, it is impossible to accurately exchange and match data that has different elements and different requirements for the common elements. The Secretary cannot achieve data exchange standardization in the UI program if the data elements cannot be accurately exchanged and matched. Therefore, the Department interprets the requirement in the Job Creation Act to standardize data exchange to include the requirement that the Secretary consult with the WIAC and develop a set of common data definitions.

The Wagner-Peyser Act, especially when read in the context of these two other statutes and the amendments made to it by WIOA, exhibits the same focus and expectation. Proposed §§ 652.300 through 652.303 enable all of this work to proceed through a collaborative approach that brings in other Federal agencies, States, and the public through the newly constituted WIAC.

Consultations with the WIC and WIAC to improve wage records and the WLMIS. Of course, consistency is not the only concern or area of consultation with stakeholders. There is a long history of interest and discussions among Federal and State agencies and data users about the desirability of making a variety of improvements to wage records that would increase their

value and usability. Among these was an effort in the 1990s referred to as the Simplified Tax and Wage Reporting System (STAWRS).

More recently, a subgroup of the Workforce Information Council[5] established under WIA

has been researching and developing reports on how to enhance the content of wage records to support improvements in labor market and workforce information. The working group is currently considering possible enhancements, such as adding data elements to the information States collect from employers through the wage reports under 20 CFR 603.2(j), and the potential impact of those enhancements, on State workforce agencies and businesses. This work will result in recommendations to the WIC in the coming year and will provide strong foundational information to support the Secretary's work with the WIAC when it is established. (See discussion on WIAC elsewhere in this proposed rule.)

As discussed elsewhere, sec. 15(d) of the Wagner-Peyser Act requires the WIAC to evaluate the WLMIS System and make recommendations to the Secretary on how to improve the WLMIS. Section 15(b) requires the Secretary to receive and evaluate the WIAC's recommendations and respond to these recommendations in writing. At the appropriate time, the WIAC will make recommendations for improving the WLMIS. These recommendations could range from technical improvements to the system, such as improving the technology States use to gather and report data, to more substantive changes to the system, such as standardizing data elements to facilitate comparisons and provide job seekers easy to understand information about the labor market.

To the extent that the Secretary's consultations with the WIAC and, potentially, other stakeholder groups result in proposals to change, enhance, or expand wage record data elements, the Secretary will carefully consider the potential benefits and costs of these proposals on the

[5] Ibid.

workforce system, and work with the Congress, other Federal agencies, States, the WIAC, and other stakeholders to explore possible ways to implement the recommendations. If appropriate, the Department will engage in further rulemaking or seek legislative authority.

Data elements associated with wage records. Potentially establishing new data elements

to wage records that employers in all States must report could have benefits similar to standardization. For example, knowing individuals' occupations, along with the wages they earned, would be extremely valuable. Such additional information would greatly assist in performance reporting and program evaluation under WIOA, in the identification of skill shortages by detailed geographic area to inform labor market training programs, and in the analysis of the long-term impact of education and training programs on labor market outcomes. It is likely that the WIAC will explore the value and viability of adding this and, potentially, other data elements. As discussed above, the current WIC is researching this issue and developing reports that will provide additional information that is likely to be passed on to the WIAC for consideration.

On January 31, 2014, the WIC released its "Phase One Interim Report on Current Practices of Unemployment Insurance Wage Record Collection and Use." This report analyzed the results of a State survey on the benefits of and barriers to enhancing labor market information by adding data elements to the quarterly wage reports employers submit to States as defined in 20 CFR 603.2(j). Among other things, the WIC's survey asked States what additional data elements, aside from Federally-required wage information, States require employers to report.

The Phase One Interim Report can be found at:

http://www.workforceinfocouncil.org/Documents/Wage%20Report%20Final.pdf. While not all

States responded, Alaska, Iowa, Minnesota, New Jersey, Ohio, Oregon, Pennsylvania, Rhode Island, Vermont, the Virgin Islands, Washington, and Wyoming reported already collecting additional data elements in the quarterly wage reports. The additional elements included the Code, total hours worked in a quarter, total number of weeks worked in a quarter, pay type (salary or hourly), hourly pay rate, gender, job title, worksite address, zip code, and tips. Some of the responding States reported that the additional data elements are extremely helpful for estimating hourly earnings, understanding career progression from occupation to occupation, assessing the effectiveness of workforce training, and making occupational projections. One State pointed out that knowing the employee worksite information helped with UC claim filing.

Asking employers to report and States to collect additional data or data categories through quarterly wage reports, would expand the data collections for many States. The Department is committed to strong stakeholder consultation as strategies are developed to improve and enhance wage records and to striking the appropriate balance between the burden of any new data collection and the value of any additional data elements. In the event the WIAC and/or other stakeholder consultations generate recommendations for such enhancements, the Department will consider additional rulemaking or seek legislative authority, if appropriate.

Request for comment. The Department is interested in receiving comments from States that responded to the survey, and any other States that require additional data elements in quarterly wage reports, on the challenges and benefits of requiring additional data elements in the quarterly wage reports. The Department is also interested in receiving comments from employers and payroll processors who provide occupational data for the quarterly wage records.

Applying 20 CFR part 603 to wage records. Finally, the regulation proposed for new

§ 652.303 would clarify that wage records are subject to and protected by the Department's regulations at 20 CFR part 603, which govern confidentiality and disclosure for confidential UC information, including the "wage information" that make up "wage records." Nothing in §§ 652.300 through 652.302 changes the confidentiality requirements of 20 CFR part 603. Information contained in "wage records" that is confidential under §§ 603.2(b) and 603.4 remains confidential in accordance with those sections of the confidentiality and disclosure requirements of subparts A and B of part 603. The Department proposes this provision to further ensure the confidentiality of the information in the State UC system.

N. ***Part 653 – Services of the Employment Service System***

In subparts B and F, the Department proposes to implement the WIOA title III amendments to the Wagner-Peyser Act and to streamline and update certain sections to eliminate duplicative and obsolete provisions. Despite these changes, part 653 will remain consistent with the "Richey Order", which allows revisions as long as they are consistent with the Richey Order. NAACP v. Brennan, 9174 WL 229, at *7.

§ 653.100 Purpose and scope of subpart.

Proposed § 653.100 explains that the regulations under part 653 seek to ensure that all services of the workforce development system be available to all job seekers in an equitable fashion.

This section includes language currently at § 653.101 that explains the purpose and scope of part 653. This approach is consistent with the Department's current policy and requiring equal access and treatment to all services available through the workforce development system is also consistent with the purpose and terms of the Richey Order.

§ 653.101 Provision of services to migrant and seasonal farmworkers.

The Department proposes to delete § 653.101 because its provisions have been moved to § 653.100 or concern itinerant or satellite offices that have been replaced by one-stop centers that provide services to both MSFWs and non-MSFWs.

§ 653.102 Job information.

The Department proposes to make several changes to § 653.102:

(1) That State agencies make job order information conspicuous and available to MSFWs "…by all reasonable means" rather than "in all local offices" to reflect the obligation of State agencies to contact MSFWs who are not being reached by the normal intake activities including at their working, living or gathering areas to explain the services available at the local one-stop center;

(2) That the language in § 653.102 referring to "computer terminal, microfiche, hard copy, or other equally effective means" be replaced with "internet labor exchange systems and

through the one-stop centers" to conform to technological advances and current techniques of States' internet-based labor exchange systems;

(3) That the reference to "each significant MSFW local office" be replaced with "employment service offices" to require each ES office to provide adequate staff assistance to MSFWs to more fully conform with the Richey Order, which requires the Department to ensure that MSFWs are serviced in a quantitatively proportionate and qualitatively equivalent way to non-MSFWs;

(4) That offices designated as significant MSFW multilingual ES offices must provide services to MSFWs in their native language, whenever requested or necessary and to acknowledge that Spanish is not the only native language spoken by MSFWs whose first language is not English.

§ 653.103 Process for migrant and seasonal farmworkers to participate in workforce development activities.

The Department proposes to revise the heading in § 653.103 to "Process for migrant and seasonal farmworkers to participate in workforce development activities" to align it with language used in titles I and III of WIOA, which refer to "workforce development activities."

Proposed § 653.103(b) includes new language requiring that persons with LEP receive, free of charge, the language assistance necessary to afford them meaningful access to the programs, services, and information offered by one-stop centers. The Department also proposes to remove the reference to § 653.105 because we propose to eliminate that section.

In proposed § 653.103(c), the Department proposes to add the words "or in their native language" to further acknowledge that Spanish is not the only native language spoken by MSFWs

whose first language is not English, and to remove language regarding checking the accuracy and quality of applications because such actions are part of compliance reviews which are addressed in § 653.108.

The Department also proposes to remove paragraphs (d) through (h) from § 653.103, that refer to application cards and an application process that are generally no longer used, having been replaced by online resources. Instead, it is proposed in paragraph (d) that local ES offices "refer and/or register the MSFW in accordance with the established procedures defined in the relevant regulations(s) or guidance."

The Department proposes to remove § 653.104(a) because MSFWs receive equitable ESs regardless of family status. The provision of services for all Wagner-Peyser participants is not dependent upon whether their family members are participating in the ES system. It is also proposed that paragraphs (b) and (c) regarding applications from an individual for employment as a farm labor contractor, and agricultural job orders submitted by a farm labor contractor or farm labor contractor employee, be relocated to § 653.500 because that addresses the ARS.

It is proposed that §§ 653.105 and 653.106 be deleted as they are generally obsolete and because State agencies no longer make referrals to or operate day-haul facilities. Additionally, it is not anticipated that State agencies will make referrals to or operate day-haul facilities in the foreseeable future in part because WIOA title I, sec. 121(e)(3) requires the colocation of Wagner-Peyser services. Should those activities resume in the future, however, the Department will ensure compliance with the requirements of the Richey Order concerning any day-haul referrals and day- haul locations operating under ES supervision. The Department also proposes to remove paragraph (c) of § 653.106 as it is unnecessary because it references §§ 653.107(j) and 653.108(p) concerning outreach visits to, and monitoring of day-haul facilities. Those outreach obligations

remain, as revised, in proposed § 653.107.

§ 653.107 Outreach and Agricultural Outreach Plan.

The Department proposes to restructure and reorganize § 653.107 to facilitate a better understanding of State agency responsibilities, outreach worker responsibilities, and ES office responsibilities relating to outreach and the Agricultural Outreach Plan (AOP). The Department anticipates that the reorganization will allow the relevant entities to identify their responsibilities under this section.

Currently, the AOP is submitted annually as a modification to the WIA under title I and the Wagner-Peyser Integrated or Unified Workforce Plan. As required by sec. 8 of the Wagner- Peyser Act, and as amended by sec. 306 of WIOA, States must now submit their Wagner-Peyser plan as part of the Unified or Combined State Plan described in WIOA secs. 102 and 103, respectively. In order to streamline the plan submission process for States, the Department proposes to require that States include their AOP with their Unified or Combined State Plan. As the State Plans are required every 4 years, the Department proposes to require that the AOP be

submitted every 4 years. The Department notes, however, that the Richey Order requires much of the information submitted through the AOP to be submitted annually. Therefore, in order to balance the goal of streamlining the State planning process with the need to comply with the Richey Order, the Department proposes that the Annual Summary required at 20 CFR 653.108(s) include outreach data and an update on the State's progress toward accomplishing its goals set forth in the AOP. In proposed paragraph (d), the Department explains the basic requirements of the AOP and the Annual Summaries and explain that official guidance will be forthcoming.

Additionally, terminology in proposed § 653.107 is revised, when appropriate, to better align its

terms with corresponding terms in WIOA which will be used in the Unified State Plan.

The Department also proposes the following changes to § 653.107:

(1) The heading is proposed to be replaced with "Outreach and Agricultural Outreach Plan (AOP)" to make clear that information regarding the AOP can be found in this section;

(2) The term "Outreach Program" used in paragraph (a) is proposed to be replaced by "Outreach" to broaden the scope of the section to accurately reflect the various requirements regarding outreach and that the section is not a formulaic program;

(3) References in paragraph (a) to the Outreach Plan have been relocated, in revised form, to paragraph (d) that concerns the "Agricultural Outreach Plan (AOP)" or "Annual Summaries," or reserved for use in future official Department guidance (the Department will include AOP guidance as part of its Unified State Plan guidance);

(4) A requirement has been added to paragraph (a) for each State agency to employ outreach workers to conduct outreach in their service areas (full or part time staff may be hired depending on whether the State has a significant MSFW population). This addition is proposed to help each State meet its requirement under the current 20 CFR 653.107(a) to locate and

contact MSFWs who are not being reached by the normal intake activities conducted by the local ES offices. The Richey Order influenced the language for this proposed addition, as it states that "each State agency shall employ an adequate number of staff who shall be assigned to ES offices…;"

(5) Paragraph (a)(4) has been revised to clarify that the Department, through guidance, will identify the 20 States with the highest estimated year-round MSFW activity;

(6) Delete paragraph (b)(2) because all outreach efforts must be vigorous. This change does not signal a reduction in the required intensity of outreach activities;

(7) The language in paragraph (h)(3)(i) be relocated to § 653.107(a)(4) and be revised to require the "top 20 States," that is the 20 States with the highest estimated year-round MSFW activity, to hire year-round full-time outreach staff to help ensure that more farmworkers will be reached on a year-round basis in high activity areas than are reached at present. The remaining States must hire part-time outreach staff year-round and must hire full-time outreach staff during periods of peak MSFW activity. These provisions are proposed to balance the urgent need for outreach with the reality of limited staff resources available to the States. Additionally, it is proposed that the option for the Regional Administrator to grant a deviation from the requirements in this paragraph be deleted to ensure that States have a means to contact MSFWs who are not being reached by the normal intake activities conducted by the local ES offices and to encourage them to strive for "the development of strategies for providing effective outreach to and improve access for individuals and employers who could benefit from services provided through the workforce development system," as stated at WIOA sec. 101(d)(3)(c);

(8) The reference to local offices in § 653.107(b)(4)(vi) has been updated to "one-stop center." In this section "one-stop centers" refers to both comprehensive and affiliate one-stop centers;

(9) The language in current § 653.107(j)(1)(v) be relocated to proposed § 653.107(b)(2) and revised by inserting the words "employer's property or work area" and changing the words "permission of the employer" to "permission of the employer, owner or farm labor contractor" because the employer may not always be the appropriate person to grant such permission;

(10) The reference to unemployed and employed MSFWs in current paragraph (j)(2)(ii) be

deleted because all MSFWs contacted through outreach activities must receive information on current and future employment opportunities;

(11) A sentence was added to paragraph (b)(6) requiring outreach workers to document and refer apparent violations that are non-employment related; and

(12) Language was added to paragraph (b)(7) regarding training outreach workers on protecting farmworkers against sexual harassment in the fields. While such abuse is not often considered when contemplating the protection of, and advocacy for, MSFWs, it is increasingly prevalent and the addition is intended to further a concerted effort to deter such abuse. To that end, the Department wishes to ensure that outreach workers are aware of the issue and able to appropriately refer MSFWs.

§ 653.108 State Workforce Agency and State monitor advocate responsibilities.

The Department proposes the following changes to § 653.108:

(1) The heading is proposed to be revised to State Workforce Agency and State monitor advocate (SMA) responsibilities to better describe the contents of this section;

(2) The requirement in paragraph (c) for SMAs to work in the State central office was removed because there are instances where it may be more productive and logical for them to work in an office that is more centrally located to the State's MSFW population;

(3) The language in paragraph (d) allowing an Office of Workforce Investment (OWI) Administrator to reallocate SMA positions and approve the use of less than full-time work be deleted because the OWI administrator does not have authority over these determinations. It is also proposed that the last sentence in this paragraph be modified to clarify that a State agency that deems SMA functions appropriate on a part-time basis must demonstrate to the Regional Administrator that part-time staffing will be sufficient for carrying out his/her duties;

(4) Language has been added to paragraph (g)(1) authorizing SMAs to request a corrective action plan from the ES office to address any deficiencies found in their review and allowing the SMAs to advise the State agency on means to improve the delivery of services to MSFWs;

(5) That the words "local office MSFW formal monitoring" be deleted from paragraph (g)(2) because the Department has proposed to include a definition for onsite reviews in 20 CFR 651.10;

(6) In paragraph (g)(3) the words "significant MSFW local office" are proposed to be replaced with "significant MSFW one-stop center" to conform with the proposed definition in 20 CFR 651.10;

(7) In paragraph (g)(4) it is proposed that the sentence referring to applications be deleted because such information can be more effectively provided and updated, as necessary, via Department-published guidance materials. It is also proposed this paragraph include language requiring the SMA to clear the State's AOP to ensure that the SMA reviews, provides necessary input, and supports the final version of the State's AOP;

(8) That paragraph (g)(6) be created to require SMAs to write and submit Annual

Summaries to the State Administrator with a copy to the Regional Administrator because it is a duty originally located in § 653.108(t) but appropriately falls under § 653.108(g) as one of the SMA duties;

(9) In paragraphs (h)(2) and (h)(3) the references to "reviews" be replaced with "onsite review(s)" for clarity, and that the reference to "ETA" in paragraph (h)(3) be replaced with "the Department;"

(10) It is proposed that in paragraph (j) the SMAs must ensure that local ES office managers submit copies of the MSFW complaint logs to the State agency quarterly pursuant to 20 CFR 658 subpart E instead of the regional office, as was originally required. This change is proposed because the regional office does not need to review each complaint log, rather it reviews the information in aggregate, as is the current practice. This helps to avoid overburdening the regional offices with more detail than is necessary. Additional details concerning the submission of complaint logs will be provided and updated, as necessary, via Department official guidance;

(11) Current paragraph (k) has been broken into separate paragraphs (proposed paragraphs (j), (k), and (l)), to clarify the intent of the respective duties under this subpart. Paragraph (j) will require SMAs to serve as advocates to improve services to MSFWs; paragraph

(k) will strengthen the requirement for SMAs to liaise with WIOA sec. 167 grantees to encourage increased collaboration between SMAs and grantees that provide services to MSFWs; paragraph (l) proposes that SMAs meet at least quarterly and establish an MOU with WIOA sec.

167 grantees and other organizations serving farmworkers, the Department intends to foster a better working relationship between the SMAs, the grantees, and the other organizations while harmonizing the delivery of services to MSFWs and minimizing the duplication of services;

(12) Language to include committees other than DOL Regional Farm Labor Coordinated Enforcement Committee has been added to paragraph (l) to broaden the scope of appropriate regional meetings the SMA must attend.

(13) Paragraph (o) has been deleted because affirmative action staffing plans are no longer required. In their place, each State agency must provide an assurance that it is complying with its affirmative action requirements set forth in 20 CFR 653.111 through the AOP. Additionally, the requirement under proposed paragraph (g)(1) for SMAs to conduct an ongoing review of and advise the State agency on its affirmative action goals will meet the need for SMAs to ensure that their respective States are complying with the affirmative action staffing requirements outlined in the Richey Order;

(14) Paragraph (p) concerning day-haul sites has been deleted for the same reasons provided for deleting §§ 653.105 and 653.106; and

(15) A new paragraph (s) has been added to outline the purpose and scope of required Annual Summaries, and a list of what the summaries must include. The requirements for the Annual Summary have been expanded to include information that would be relevant for the Department's review of how the States are providing services to MSFW. Many of the added requirements are taken from other sections under this chapter. Specifically, the Annual Summary would include assurances or summaries of SMA duties taken from current

§ 653.108(c), (g)(1), (h)(2), (j), (k), (q), and (r). This section also requires that the Annual Summaries include a summary of the activities conducted over the course of the previous year

that relate to meeting the goals of the AOP. At the end of the AOP, this section would require that the SMA provide a synopsis of the State agency's achievements in meetings its goals set forth in the AOP. This will help keep each State agency on track toward achieving its AOP goals and help the

Department track such progress.

In addition, related to proposed § 653.108(g)(4), the Department notes that the process by which the SMA will receive, review, and approve the AOP will be described in the joint planning guidance issued by the Departments of Labor and Education.

§ 653.109 Data collection and performance accountability measures.

For § 653.109, Data collection, the Department proposes to include the equity indicators

and minimum service level indicators currently at § 653.112 as they are data elements that appropriately fit under § 653.109, with the exception of the contents of current § 653.112(c)(3) that will be deleted because ETA does not publish a list of priorities that State agencies can use as a basis for the minimum service levels required of significant MSFW States. The Department also proposes to add "and performance accountability measures" to § 653.109 so the part may appropriately include the additional measures.

The Department proposes to make several other changes to § 653.109:

(1) Paragraph (a) specifies that State agencies must collect career service indicator data for services described in WIOA sec. 134(c)(2)(A)(xii) because WIOA sec. 134(c)(2)(A)(xii) includes several of the existing requirements under § 653.109;

(2) Paragraph (b) has been revised to specify that data collection will include the number of non-MSFWs and MSFWs registered for Wagner-Peyser services and MSFW average earnings, and

will remove the requirement to collect data on the number of MSFWs referred to training, receiving job development, receiving testing, receiving employment counseling, and

referred for supportive services or other services, as those are already required data elements under WIOA; and

(3) Paragraph (b) also replaces the terms "wage rates" and "duration of employment" with the terms "entered employment rate" and "employment retention rate," respectively to conform with the terminology by the Department's data collection mechanism (currently the Labor Exchange Agricultural Reporting System 9002a form).

§ 653.110 Disclosure of data.

Proposed § 653.110 contains minor changes to clarify the provisions and to update terminology.

§ 653.111 State agency staffing requirements.

In § 653.111 it is proposed that the requirement for each State agency with significant MSFW offices to submit an affirmative action plan be replaced with the requirement that each such State agency submit assurances, as part of its Unified State Plan and as part of its Annual Summaries, that it is implementing an affirmative action staffing program. This change is proposed because it will help each State agency with significant MSFW offices to streamline implementation of its affirmative action program while ensuring that the Department remains in compliance with the relevant requirements under the Richey Order. It is proposed that the regulation providing the formula for determining the racial and ethnic characteristics of the workforce be deleted from the

regulation because this will be provided in subsequently issued guidance.

It is proposed that § 653.112 be deleted because PBPs are obsolete as each State agency is required to submit a Unified or Combined State Plan pursuant to WIOA title I. The text in paragraphs (b) and (c) concerning equity indicators and minimum level service requirements is proposed to be relocated, with minor revisions, to § 653.109.

It is proposed that § 653.113 be deleted and its contents relocated to 20 CFR 658.419 because it relates to the ES and Employment-Related Law Complaint System (Complaint System).

In subpart F, the Department proposes the following changes to clarify the requirements of this subpart:

(1) The paragraphs under the ARS have been reorganized into subcategories based on each stakeholder's respective responsibilities (the subcategories are ES Office Responsibilities, State Agency Responsibilities, and Processing Job Orders). The proposed restructuring of this subpart is intended to help stakeholders better understand how the system works and more easily identify and comprehend their respective responsibilities. The reorganizing is also proposed to help clarify the meaning of the regulations;

(2) The paragraphs have been revised to state requirements in the positive and active voice, versus the negative passive voice from which they were originally drafted;

(3) References to information that needs to be provided to MSFWs in Spanish be changed to "native language" to conform to TEGL 26-02; and

(4) The heading for subpart F has been revised and supplemented by adding the words "for US Workers" to clarify that ARS is meant for U.S. workers versus foreign workers. It is a common misconception that the ARS is for foreign workers who may be hired by U.S. employers through

visa programs such as the H-2A or H-2B visa programs, and the Department intends the proposed change to help eliminate this misconception. For the same reason, any

references to the temporary employment of foreign workers in the United States (that would otherwise fall under 20 CFR 655) have been deleted.

§ 653.501 Requirements for processing clearance orders.

The Department proposes the following changes to § 653.501:

(1) In paragraph (c)(1)(iv)(I), currently paragraph (d)(2)(x), it is proposed that the sentence regarding the contingency of payments made beyond the period of employment specified in the job order be deleted because such terms are already specified in the job order and the language is duplicative;

(2) In paragraph (c)(3)(iv), currently paragraph (d)(2)(xiii), it is proposed that the sentence referring to requests for foreign workers be deleted because this section should only cover information regarding ARS and the requirements for foreign workers are covered under 20 CFR 655; and

(3) In paragraph (j), it is proposed that the Regional Administrator notify the national monitor advocate instead of the OWI Administrator when a potential labor supply State agency rejects a clearance order and the Regional Administrator does not concur with the reasons for rejection. In this case, the national monitor advocate, in consultation with the OWI Administrator, is the appropriate person to make the final determination because it is the common practice for the national monitor advocate to provide the State agencies with guidance regarding ARS.

§ 653.502 Conditional access to the agricultural recruitment system.

The Department proposes to delete current § 653.502 concerning changes in crop and recruitment situations and fold its contents without change into proposed § 653.501.

The Department proposes to add a new § 653.502 which contains the relocated provisions of 20 CFR 654.403. While the housing standards at 20 CFR 654 subpart E, including current § 654.403, will expire 1 year after the publication of the final rule, the Department proposes moving current § 654.403 into this new section because those requirements remain necessary and relevant, and because that section is related to the terms and requirements of this subpart.

Accordingly, the provisions of 20 CFR 654.403 have been relocated to proposed 20 CFR 653.502.

§ 653.503 Field checks.

Proposed § 653.503(b) has been revised to clarify that State agencies must conduct field checks on at least 25 percent of agricultural worksites to align with common practice. The Department also proposes to add language requiring a State agency with fewer than 10 ES placements to conduct field checks on all agricultural worksites where the placements have been made. This change is proposed to ensure that all worksites are checked whenever feasible. In paragraph (e), it is proposed that the word “shall” be changed to “may” because it is not a requirement, rather State agencies may choose to enter into an agreement with an enforcement agency if they believe it is necessary or helpful.

O. ***Part 654 – Special Responsibilities of the Employment Service System***

1. Introduction

The Department proposes to revise the ETA regulations governing Housing for Agricultural Workers at 20 CFR 654, subpart E, issued under the authority of the 1933 Wagner- Peyser Act by updating outdated terminology and by establishing an expiration date for the ETA standards in order to transition housing currently governed by the ETA standards to the

Occupational Safety and Health Administration (OHSA) regulations governing temporary labor camps for agricultural workers.

2. Subpart E – Housing for Agricultural Workers

§ 654.401 Applicability.

The Department proposes to amend § 654.401 to require that housing covered by the regulations in this subpart be subject to the relevant OSHA housing standards for agricultural workers beginning 1 year after the publication of the final rule.

In 1951 the U.S. ES Bureau of Employment Security established the ETA housing standards for farmworkers. These standards were updated in 1959 and again in 1968. However, despite the Department's intention to "make every effort to ensure that 'housing and facilities are hygienic and adequate to the climatic conditions of the area of employment'" and that such housing "conformed to

applicable State or local housing codes, and in the absence of such codes, that the housing would not endanger the health or safety of the workers," farmworkers continued to face inadequate, unsafe, and unsanitary housing. In 1970, Congress passed the Occupational Health and Safety Act (OSHA) which was intended to assure that every person working in the United States has safe and healthful working conditions." In this light, OSHA adopted a set of national consensus standards for temporary labor camps which was published in August 1971.

Therefore, since 1971 the Department has had in effect two sets of agricultural housing standards for farmworkers: those under the ETA regulations (originally at 20 CFR part 620, later at 20 CFR part 654) and those under the OSHA regulations (at 29 CFR 1910.142). The dual set of standards has long resulted in confusion with respect to their applicability and enforcement. In view of these problems, the Department held hearings in 1976 with stakeholders, developed

several proposals to arrive at a single set of standards, and, on December 9, 1977, rescinded the ETA regulations and standards.

While the rescission was effective immediately, employers whose housing met the ETA standards on the date of their rescission were given until January 1, 1979 to come into compliance with the OSHA housing regulations. Later, the Department received numerous complaints objecting to the rescission of the ETA housing regulations, including those from employers who had constructed housing to conform to the ETA standards and complained that the shift from ETA to OSHA standards would require costly modifications to housing which the Department had previously approved. In response to these comments, the Department proposed on September 1, 1978 to revise the December 9, 1977 rescission action by adding an indefinite extension of time for employers already following the ETA standards to bring their housing into compliance with the OSHA standards and a transitional provision for housing built in reliance on the ETA regulations.

On March 4, 1980, the Department issued a final rule providing that the OSHA standards and regulations applied to all temporary housing for farmworkers except that "[e]mployers whose housing was constructed in accordance with the ETA housing standards may continue to follow the full set of ETA standards set forth in this subpart only where prior to April 3, 1980 the housing was completed or under construction, or where prior to March 4, 1980 a contract for the construction of the specific housing was signed." 45 FR 14180, 14182 (Mar. 4, 1980).

The Department proposes that the remaining housing currently governed under the standards and provisions at 20 CFR part 654 subpart E (Housing for Agricultural Workers) be subject to the OSHA standards and provisions beginning 1 year after the publication of the final rule, except that mobile range housing for sheepherders and goatherders must continue to meet existing Departmental guidelines and/or applicable regulations. The proposed expiration date will provide sufficient time for affected employers to transition into compliance with the OSHA standards.

Pursuant to the January 19, 1981 agreement between OSHA, the WHD (replacing the abolished Employment Standards Administration (ESA)), and ETA for Inspections of Migrant Agricultural Worker Housing, the Department's WHD will continue to be responsible for enforcing the provisions under 29 CFR 1910.142. Beginning 1 year after the publication of the final rule, the Department will not apply or enforce the standards of this subpart, other than in cases relating to events predating that expiration date.

Requiring all housing to meet the relevant OSHA standards and eliminating the ETA standards will reduce administrative and enforcement burdens on employers, workers, State agencies, and the Department because they will need to reference and rely on only one set of applicable standards located in one place. Enforcement agency staff and State agency staff that

conduct housing inspections will only need to understand one set of standards which will ease the learning process. Additionally, the change will benefit MSFWs as the regulations under 29 CFR 1910.142 conform to more modern housing standards than those under 20 CFR part 654 subpart E. The Department acknowledges that the change will mean that some employers will need to upgrade their farmworker housing to meet the OSHA standards. However, the benefit to farmworkers and the administrative benefits to State agencies and the Department outweigh the adjustments employers will need to make to comply with the OSHA standards. In order to assist employers, the Department will provide technical assistance to facilitate the transition to the OSHA housing standards.

Having been in place for 34 years, it is the Department's opinion that it is appropriate to complete the transition to the OSHA standards begun in 1980 and to phase out in full the ETA standards grandfathered for 34 years for farmworker housing completed or under construction prior to March 3, 1980, or under contract for construction prior to April 3, 1980. As in 1980, the Department continues to believe that the OSHA regulations provide for superior standards of safety and habitability for MSFWs and do not overly burden employers.

In addition to the change described above, the Department proposes to amend the following sections:

§ 654.400 Scope and purpose.

The Department proposes to amend § 654.400 to update terminology and explain that housing covered under the standards and provisions of subpart E will be subject to different regulations without grandfathering beginning 1 year after the date that this final regulation is published.

In addition to the amendment described above, the Department proposes to revise

§ 654.401 for clarity, to add a new paragraph (b), and to shorten the section heading by eliminating unnecessary language.

§ 654.402 Variances.

The Department proposes to amend § 654.402 to update terminology and remove the term "permanent" because, as proposed, variances will expire on the given expiration date for the standards and provisions of subpart E; therefore, employers will no longer be entitled to a permanent variance. The deadline of June 2, 1980 is removed because the Department proposes to receive applications for temporary variances from the ETA standards until the date on which the standards and provisions of subpart E will expire. Additionally, paragraph (f) has been added

to state that all variances and requests for variances will expire 1 year after the publication of the final rule requiring this change, and that no applications will be accepted as of that date. After this change takes effect, the Department will return any pending requests for variances to the appropriate applicant noting that all variances and variance requests expired on that date and are therefore stale.

§ 654.403 [Reserved]

Finally, the Department proposes that the provisions of § 654.403 be deleted and relocated to 20 CFR 653.502 because they more directly relate to the governance and operation of the ARS rather than the condition of worker housing. Section 654.403 provides for conditional access to the clearance order system administered by the relevant State workforce agency which is needed to effectively service employers whose housing has fallen temporarily out of compliance with the

applicable housing standards during a period of use in the previous year, and where the employer has not had an opportunity to bring the housing back into compliance.

The following sections of part 654 remain unchanged: §§ 654.404, 654.405, 654.406, 654.407, 654.408, 654.409, 654.410, 654.411, 654.412, 654.413, 654.414, 654.415, 654.416, and 654.417.

P. ***Part 658 – Administrative Provisions Governing the Employment Service System***

20 CFR part 658 sets forth systems and procedures for complaints, monitoring for compliance assessment, enforcement and sanctions for violations of the ES regulations and employment-related laws, including discontinuation of services to employers and decertification of State agencies.

The Department's proposed changes update terminology and responsibilities and reorganize various regulations to increase the clarity and efficiency of the provisions involved. Additionally, headings have been revised, when necessary, to reflect proposed changes to the regulations, and language has been added to permit, where relevant, the use of electronic mail and electronic signatures. The complaint system under 20 CFR part 658 does not apply to complaints filed under WIOA title I.

During the 1980 rulemaking, the Department received numerous comments about the proposed complaint system at 20 CFR part 658 subpart E (Complaint System) including comments that focused on the limited staff resources available to provide all labor exchange services including the handling of complaints. The Department took those comments into account and limited the complaint system to only take in writing those complaints that were "Job Service (JS) related or those non-JS related complaints that [were] filed by MSFWs alleging violations of laws enforced by ESA or OSHA." (Since the dissolution of ESA on Nov. 8, 2009, the WHD has taken on the relevant enforcement responsibilities (45 FR 39454, 39456 (June 10, 1980.)) The Department now believes it is appropriate and consistent with the Richey Order to allow most employment-related law complaints by MSFWs to be recorded, referred, and tracked to resolution (except those that relate to WIOA title I complaints which follow a different process—see WIOA title I sec. 181(c)). Technological advances in the workplace since 1980, such as the widespread use of computer software and systems, have made performing such work feasible with limited staff resources. Additionally, recording, referring, and tracking to resolution the additional complaints will help, directly or indirectly, to deter the employment- related discrimination and abuses that MSFWs continue to suffer throughout the United States.

The Department proposes to revise the heading for 20 CFR part 658 subpart E from "Job Service Complaint System" to "Employment Service and Employment-Related Law Complaint System (Complaint System)" to accurately reflect what the Complaint System covers. The Department proposes to eliminate § 658.401 and fold its revised provisions that relate to the purpose and scope of the subpart into § 658.400.

Regarding provisions concerning the complaint system at the State level, the Department proposes to restructure the previous §§ 658.410 through 658.418 by placing them in § 658.411 and breaking them down into subsections for complaints alleging violation(s) of employment- related

laws and subsections on complaints alleging violation(s) of the ES regulations. Those subsections are further broken down based on whether the complainant is an MSFW or not.

Proposed new §§ 658.410 and 658.411 provide an overview of the Complaint System as it pertains to all persons who submit a complaint and as it pertains specifically to MSFWs who submit a complaint.

§ 658.410 Establishment of Local and State Complaint Systems.

In § 658.410(c)(2), it is proposed that quarterly complaint logs be submitted to the SMA and the State Administrator rather than to the Regional Administrator, unless requested. This change is proposed to increase the efficiency of the Regional Administrator's position that does not require the routine review of the multitude of highly detailed logs.

§ 658.411 Action on complaints.

Section 658.411 is expanded to incorporate the majority of the provisions currently in

§§ 658.412 through 658.417 in the interest of streamlining and clarity. The Department proposes to eliminate §§ 659.412 through 658.417 as separate sections. Not included in § 658.411, however, is the reference currently in § 658.414(a) to 29 CFR part 42 because the proposed

revisions to the complaint system call for coordination with all relevant enforcement agencies concerning MSFW complaints, and provisions at 29 CFR part 42 discuss such coordination only between WHD, OSHA, and the ETA. This new approach ensures that State and local officials will

consider forwarding employment-related law complaints to a broader group of enforcement agencies. Also excluded from proposed § 658.411 is the text of current § 658.414(c) that has become redundant because proposed § 658.410 also states that all complaints filed by an MSFW must be recorded. The Department proposes to add new § 658.419 that will incorporate the relocated provisions of 20 CFR 653.113 (Apparent Violations) because those provisions set forth the procedures for State agency employees to follow when they become aware of an apparent violation of employment-related law or of the ES regulations which is more appropriately located in 20 CFR part 658 subpart E than in 20 CFR part 653 subpart B that concerns services for MSFWs.

Proposed § 658.411(d)(6) indicates that complaints alleging violations of the ES regulations will be handled to resolution if the complaint was made within 2 years from the date of occurrence, versus the 1 year provided currently at § 658.401. A 2-year limitations period would be consistent with the limitations period for non-willful violations of the Fair Labor Standards Act, a worker protective statute of general application that applies to employment in agriculture and from which the definition of farmwork in 20 CFR 651.10 is largely drawn.

Increasing the limitations period to 2 years will provide greater protections to those participating in the ES system by accommodating those individuals that do not feel comfortable filing or are not able to file complaints within a year from the alleged occurrence. Increasing the limitations period by 1 year will not increase the burden on State agencies or employers because the Uniform Administrative Requirements for the Wagner-Peyser grant already requires the

retention of all financial and programmatic records, supporting documents, and statistical records for 3 years, and those records, in many cases, will contain information bearing on complaints filed within the 2-year limitations period. Finally, as with complaints filed under the FLSA, there is little risk that a complaint will become stale if it is filed 2 years after an alleged occurrence. The 2-year limitations period would not apply to employment-related law complaints as each enforcement

agency has its own respective limitations period for which it can process complaints.

It is proposed that §§ 658.420 through 658.426 be restructured to conform to the restructured regulations for the Complaint System at the State level in which the system is broken down into employment law-related complaints and complaints relating to the ES regulations.

§ 658.422 Handling of employment-related law complaints by the Regional Administrator.

The Department proposes to revise § 658.422 by replacing in § 658.422(a) the reference to "ESA or OSHA" with "the appropriate enforcement agency" to allow for complaints to be referred to the appropriate agency and not confined to two agencies within the Department. Also proposed is the elimination of § 658.422(d) because its requirement to log all complaints and related correspondence is already set forth in § 658.420(d). The Department also proposes to eliminate § 658.423 as a separate section and incorporate its provisions in § 658.420 that addresses the handling and other treatment of complaints.

§ 658.424 Proceedings before the Office of Administrative Law Judges.

Per § 658.424(b), the Department proposes to clarify that the rules governing procedures before the Department's OALJ at subpart A of 29 CFR part 18 govern proceedings under § 658.424, except where the provisions of §§ 658.424 and 658.425 conflict with the provisions of that subpart. However, the rules of evidence at subpart B of 29 CFR part 18 do not apply to this section. This change is proposed to ensure consistency with other ETA programs.

§ 658.501 Basis for discontinuation of services.

In 20 CFR part 658 subpart F, it is proposed that language be added to § 658.501(c) to clarify the procedures a State agency must follow when an employer participating in the ES system has allegedly not complied with the terms of the temporary labor certification.

In 20 CFR part 658 subpart G, it is proposed that the references to §§ 658.620 and 658.621 be deleted from § 658.600 because those sections are reserved. It is also proposed that under § 658.601(a)(1)(ii), "Employment Security Automated Reporting System (ESARS) tables and Cost Accounting Reports" be replaced with "the Department's ETA 9002A report, or any successor report required by the Department" to conform to what is currently utilized.

In 20 CFR part 658 subpart H, the Department proposes to replace outdated or otherwise incorrect terminology. For example, ETA is replaced by the Department, State agency is replaced by State Workforce Agency (SWA), and JS is replaced with ES.

Finally, recognizing that almost all correspondence, formal filings and submissions, and other exchanges of documents and information between the public and the Department are conducted electronically, these regulations clarify that any required filing or submission of documents, etc. via mail or hard copy may also be accomplished electronically.

V. Rulemaking Analyses and Notices

A. Executive Orders 12866 and 13563: Regulatory Planning and Review

Executive Order (E.O.) 12866 directs agencies, in deciding whether and how to regulate, to assess all costs and benefits of available regulatory alternatives, including the alternative of not

regulating. E.O. 13563 is supplemental to and reaffirms E.O. 12866. It emphasizes the importance of quantifying present and future benefits and costs; directs that regulations be adopted with public participation; and where relevant and feasible, directs that regulatory approaches be considered that reduce burdens, harmonize rules across agencies, and maintain flexibility and freedom of choice for the public. Costs and benefits are to include both quantifiable measures and qualitative assessments of possible impacts that are difficult to quantify. If regulation is necessary, agencies should select regulatory approaches that maximize net benefits. OMB determines whether a regulatory action is significant and, therefore, subject to review.

Section 3(f) of E.O. 12866 defines a "significant regulatory action" as any action that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising from legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

Summary of the analysis. The Department provides the following summary of the

regulatory impact analysis:

(1) The proposed rule is a "significant regulatory action" under WIOA sec. 3(f)(4) of

E.O. 12866; therefore, OMB has reviewed the proposed rule.

(2) The proposed rule would have no cost impact on small entities.

(3) The proposed rule would not impose an unfunded mandate on Federal, State, local, or tribal governments as defined by the Unfunded Mandates Reform Act of 1995.

In total, the Department estimates that this NPRM would have an average annual cost of

$38,437,779 and a total 10-year cost of $305,556,353 (with 7-percent discounting). The largest contributor to the cost is the requirement related to the development and continuous improvement of the workforce development system, followed by the career pathways development and the colocation of Wagner-Peyser services.

The Department was unable to quantify several important benefits to society due to data limitations or lack of existing data or evaluation findings on particular items. Based on a review of empirical studies (primarily studies published in peer-reviewed academic publications and studies sponsored by the Department), we identified a variety of societal benefits: (1) training services increase job placement rates; (2) participants in occupational training experience higher

reemployment rates; (3) training is associated with higher earnings; and (4) State performance accountability measures, in combination with the board membership provision requiring employer/business representation, can be expected to improve the quality of the training and, ultimately, the number and caliber of job placements. We identified several channels through which these benefits might be achieved: (1) better information about training providers will enable workers to make better informed choices about programs to pursue; (2) sanctions to under-performing States will serve as an incentive for both States and local entities to monitor performance more effectively and to intervene early; and (3) enhanced services for dislocated workers, self-employed individuals, and workers with disabilities will lead to the benefits discussed above.

The Department requests comment on the costs and benefits of this NPRM with the goal of ensuring a thorough consideration and discussion at the Final Rule stage.

1. Need for Regulation

Public Law 113-128, the Workforce Innovation and Opportunity Act, enacted on July 22, 2014, statutorily requires publication of proposed implementation regulations not later than 180 days after the date of enactment. The Department has determined that implementing regulations are necessary in order for the WIOA program to be efficiently and effectively operated and that such regulations shall provide Congress and others with uniform information necessary to evaluate the outcomes of the new workforce law.

2. Alternatives in Light of the Required Publication of Proposed Regulations

OMB Circular A-4, which outlines best practices in regulatory analysis, directs agencies to analyze alternatives outside the scope of their current legal authority if such alternatives best satisfy the philosophy and principles of E.O. 12866. While the WIOA provides little regulatory discretion, the Department assessed, to the extent feasible, alternatives to the proposed regulations.

In this NPRM, the Department considered significant alternatives to accomplish the stated objectives of the WIOA while also attempting to minimize any significant economic impact of the proposed rule on small entities. This analysis considered the extent to which WIOA's prescriptive language presented any regulatory options which would also allow for achieving the Act's articulated program goals. The Department, in many instances, has reiterated the Act's language in the regulatory text and expansions are offered for clarification and guidance to the regulated community. The additional regulatory guidance should create

more efficient administration of the program by reducing ambiguities and subsequent State and local revisions as a result of unclear statutory language.

In addition, the Department considered and, where feasible, proposed to issue sub-regulatory guidance in lieu of additional regulatory requirements. This policy option has two primary benefits to small entities. First, guidance will be issued following publication of the rules, thereby allowing States, local areas, and small entities additional time to prepare their compliance efforts. Second, this level of guidance is more flexible in nature, allowing for faster modifications and any subsequent issuances, as necessary.

The Department considered three possible alternatives:

(1) To implement the changes prescribed in WIOA, as noted in this NPRM, thereby satisfying the statutory mandate; or

(2) To take no action, that is, to attempt to implement the WIOA utilizing existing Workforce Investment Act (WIA) regulations; or

(3) To not publish regulation and rescind existing WIA final regulations and, thereby ignoring the WIOA statutory requirement to publish implementing regulations thus forcing the regulated community to follow statutory language for implementation and compliance purposes.

The Department considered these three options in accordance with the provisions of E.O.

12866 and chose to publish the WIOA NPRM, that is, the first alternative. The Department considered the second alternative, that is, retaining existing WIA regulations as the guide for WIOA implementation, but believes that the requirements have changed substantially enough that new implementing regulations are necessary for the workforce system to achieve program compliance. The Department considered the third alternative, that is, to not publish an implementing regulation and rescind existing WIA final regulations, but rejected it because the

WIOA legislative language in and of itself does not provide sufficient detailed guidance to effectively implement WIOA; thus, regulations are necessary to achieve program compliance.

In addition to the regulatory alternatives noted above, the Department also considered whether certain aspects of the WIOA could be phased in over a prescribed period of time (different compliance dates), thereby allowing States and localities additional time for planning and successful implementation. As a policy option, this alternative appears appealing in a broad theoretical sense and where feasible (e.g., Wagner-Peyser colocation of services), the Department has recognized and made allowances for different schedules of implementation.

However, upon further discussion and in order to begin to achieve the intended legislative benefits

of the WIOA, additional implementation delays beyond those noted in this NPRM may create potentially more issues than the benefit of alternative starting dates. Specifically, as many critical WIOA elements follow upon the implementation of other provisions (e.g., technology and performance reporting are intrinsically related), discussions around delaying additional aspects became quite complicated such that the interrelatedness of the WIOA's requirements suggested that the alternative of delaying additional aspects was not operationally feasible.

Furthermore, the data necessary to fully review this option does not yet exist, and will not until local workforce development boards (WDBs) conduct procurements and announce awards. Similarly, performance standards will be negotiated at a future time and based upon a variety of factors including State and local economic conditions, resources, and priorities. Establishing proposed standards in advance of this statutorily-defined process may not be an efficient or effective action. The enforcement methods described in the proposed rule are a reflection of prescribed WIOA requirements and entity size should not in and of itself create alternative methods for compliance or different time periods for achieving compliance. Although the

Department has not determined sufficiently valid reasons for altering compliance timeframes in addition to those described in the proposed rule for small entities, we seek comment on this issue.

The Department's initial impact analysis has concluded that by virtue of WIOA's prescriptive language, particularly the requirement to publish implementing regulations within 180 days, there are no viable regulatory alternatives available other than those discussed above.

The Department requests comment on these or other alternatives, including alternatives on the specific provisions contained in this NPRM, with the goal of ensuring a thorough consideration and discussion at the Final Rule stage.

3. Analysis Considerations

The Department derives its estimates by comparing the existing program baseline, i.e., the benefits and costs associated with current practices, which at a minimum, must comply with the 2000 WIA Final Rule (65 FR 49294, Aug. 11, 2000), against the additional benefits and costs associated with implementation of provisions contained in this WIOA-required NPRM.

For a proper evaluation of the additional benefits and costs of this NPRM, the Department explains how the required actions of States, WDBs, employers and training entities, government agencies, and other related entities are linked to the expected benefits and estimated costs. We also considered, where appropriate, the unintended consequences of the proposed regulations introduced by this NPRM. The Department makes every effort, when feasible, to quantify and monetize the benefits and costs of this NPRM. The Department was unable to quantify the benefits associated with the proposed rule because of data limitations and a lack of operational data or evaluation findings on the provisions of the proposed rule or WIOA in

general. Therefore, we describe the benefits qualitatively. We followed the same approach when we were unable to quantify the costs.

Throughout the benefit-cost analysis, the Department made every effort to identify and quantify all potential incremental costs associated with the implementation of WIOA as distinct from what already exist under WIA, WIOA's predecessor statute. Despite our best estimation efforts, however, the Department might be double-counting some activities that are already happening under WIA. Thus, the costs itemized below represent an upper bound of the potential cost of implementing the statute. The Department requests comment on its cost estimates, specifically in terms of whether it has accurately captured the additional costs associated with the implementation of WIOA.

In addition to this NPRM, the Departments of Labor and Education have proposed a joint NPRM to implement specific requirements of WIOA that fall under both Departments' purviews. While we acknowledge that these proposed rules and their associated impacts may not be wholly independent from one another, we are unaware of any reliable method of quantifying the effects of this interdependence. Therefore, our analysis does not capture the correlated impacts of the benefits and costs of this proposed rule and those associated with the other NPRMs. We request comments from the public about the appropriateness of this assumption.

In accordance with the regulatory analysis guidance contained in OMB Circular A-4 and consistent with the Department's practices in previous rulemakings, this regulatory analysis focuses on the likely consequences (benefits and costs that accrue to citizens and residents of the United States) of this WIOA-required NPRM. The analysis covers 10 years (2015 through 2024) to ensure it captures major additional benefits and costs that accrue over time. The Department expresses all quantifiable impacts in 2013 dollars and use 3-percent and 7-percent discounting following OMB Circular A-4.

Exhibit 1 presents the estimated number of entities expected to experience an increase in level of effort (workload) due to the proposed requirements contained in this NPRM. These estimates are provided by the Department and are used extensively throughout this analysis to calculate the estimated cost of each proposed provision.

EXHIBIT 1: Number of Affected Entities by Type

Entity Type	Number of Entities
States impacted by DOL program requirements	56[6]
States without collocated Wagner-Peyser offices and one-stops	10[7]
States without sector strategies	21[2]

States that need to create Unified State Plans	14[2]
States that must pay their share for proportionate use of one-stop delivery systems	54[2]
Local areas without collocated Wagner-Peyser offices and one-stops	100[2]
Workforce development boards	580[2]
Workforce development boards selecting one-stop operators	250[2]
Local Boards performing regional plan modifications	300[2]

Transfer Payments

In addition, the Department provides an assessment of transfer payments associated with transitioning the nation's public workforce system from the requirements of WIA to new requirements imposed by WIOA. In accordance with OMB Circular A-4, we consider transfer payments as payments from one group to another that do not affect total resources available to society. For example, under WIOA, partners are required to pay their share for proportionate use

[6] Ibid.

[7] Department of Labor estimate.

of one-stop delivery systems. Partners receive sufficient Federal funding to cover these payments, rendering this payment a transfer rather than a new cost. Under-performing States will also receive sanctions under WIOA, which are similarly classified as transfers as they result in the de-obligation of funds from the State's set-aside. In accordance with the State allotment provisions noted in

WIOA sec. 127, the interstate funding formula methodology is not significantly different than that utilized for the distribution of WIA funds. Final program year grant allocations will reflect WIOA requirements and are under development.

One example of transfer payments is the expectation that available U.S. workers trained and hired who were previously unemployed will no longer need to seek new or continued unemployment insurance benefits. Assuming other factors remain constant, the Department expects State unemployment insurance expenditures to decline because of the hiring of U.S. workers following WIOA implementation. The Department, however, cannot quantify these transfer payments due to a lack of adequate data.

In the subject-by-subject analysis, the Department presents the additional labor and other costs associated with the implementation of each of the proposed provisions in this NPRM. Exhibit 2 presents the compensation rates for the occupational categories expected to experience an increase in level of effort (workload) due to the proposed rule. We used wage rates from the Bureau of Labor Statistics' Mean Hourly Wage Rate for private and State employees.[8] For simplicity, we applied State-level wages to local employees. We also used wage rates from the Office of Personnel Management's Salary Table for the 2013 General Schedule for Federal

[8] Bureau of Labor Statistics, May 2013, National Occupational Employment and Wage Estimates, retrieved from: http://www.bls.gov/oes/current/oes_nat.htm.

employees.[9] We adjusted the wage rates using a loaded wage factor to reflect total compensation, which includes health and retirement benefits. For the State and local sectors, we used a loaded wage factor of 1.55, which represents the ratio of total compensation[10] to wages.[11] For Federal employees, we used a loaded wage factor of 1.69 based on internal data from DOL. We then multiplied the loaded wage factor by each occupational category's wage rate to calculate an hourly compensation rate.

The Department invites comments regarding the assumptions used to estimate the level of additional effort required for the various proposed new activities, as well as data sources for the wages and the loaded wage factors that reflect employee benefits used in the analysis.

The Department uses the hourly compensation rates presented in Exhibit 2 throughout this analysis to estimate the additional labor costs for each proposed provision.

[9] The wage rate for Federal employees is based on Step 5 of the General Schedule (source: OPM, 2013, Salary Table for the 2013 General Schedule, retrieved from: http://www.opm.gov/policy-data-oversight/pay-leave/salaries- wages/2013/general-schedule/gs_h.pdf).

[10] BLS Employment Cost Index, 2013 Average Series ID CMU3010000000000D, CMU3010000000000P (source: Bureau of Labor Statistics, 2013 Employer Costs for Employee Compensation, retrieved from: http://www.bls.gov/schedule/archives/ecec_nr.htm).

[11] The State and local loaded wage factor was applied to all non-Federal employees. Discerning the number of State

and local-sector employees and private-sector employees at the local level is difficult; therefore, the

Department used the State and local-sector loaded wage factor (1.55) instead of the private-sector wage factor (1.42) for all non- Federal employees to avoid underestimating the costs.

Exhibit 2: Calculation of Hourly Compensation Rates				
	Grade	**Average Hourly Wage**	**Loaded Wage Factor**	**Hourly Compensation Rate**
State and Local Employees				
Administrative staff[12]		$17.96		$27.84
Legal counsel staff[13]		$40.68		$63.05
IT reprogramming or database development staff[14]		$38.91		$60.31
Managers[15]		$45.32		$70.25
Technical staff[16]		$43.38		$67.24

The section-by-section analysis presents the total incremental cost of the proposed rule relative to the baseline, i.e., the current practice. At a minimum, all affected entities are currently required to comply with the 2000 WIA Final Rule (65 FR 49294, Aug. 11, 2000); however, some affected entities may already be in compliance with some provisions of the proposed rule. This analysis estimates the incremental costs that would be incurred by affected entities which are not yet compliant with the proposed rule. The equation below shows the method by which the Department calculated the incremental total cost for each provision over the 10-year analysis period.

[12] BLS OES, May 2013, 43-0000 Office and Administrative Support Occupations (http://www.bls.gov/oes/current/999201.htm#43-0000).

[13] BLS OES, May 2013, 23-10111 Lawyers (http://www.bls.gov/oes/current/999201.htm#23-0000).

[14] BLS OES, May 2013, 15-1131 Computer Programmers (http://www.bls.gov/oes/current/oes151131.htm) [15] BLS OES, May 2013, 11-1021 General and Operations Managers (http://www.bls.gov/oes/current/999201.htm#11-0000).

[16] BLS OES, May 2013, average for the following occupational categories weighted by the number of employees in

State government: 15-1131 Computer Programmers; 15-1132 Software Developers, Applications; 15-1133 Software Developers, Systems Software ; and 15-1134 Web Developers (http://www.bls.gov/oes/current/999201.htm#15- 0000).

10 □ □

$$\text{Total Cost} = \sum (A_{\square} \sum (N_i \text{ x } H_i \text{ x } W_{\square} \text{ x } L_{\square})$$

$$+ \sum_{T=1} A_j \text{ x } C_j \text{)}$$

=1

=1

Where, A_l Number of affected entities that would incur labor costs,

N_i Number of staff of labor type *i*,

H_i Hours required per staff of labor type *i*,

W_i Mean hourly wage of staff of labor type *i*,

L_i Loaded wage factor of staff of labor type *i*,

A_j Number of affected entities incurring non-labor costs of type *j*,

C_j Non-labor cost of type *j*,

i Staff type,

n Number of staff types,

j Non-labor cost type,

m Number of non-labor cost types,

T Year.

The total cost of each provision is calculated as the sum of the total labor cost and total non-labor cost incurred each year over the 10-year period (see Exhibit 3 for the 10-year cost of the proposed rule by provision). The total labor cost is the sum of the labor costs for each labor type *i* (e.g., administrative staff, legal counsel staff, and managers) multiplied by the number of affected entities that will incur labor costs, A_l. The labor cost for each labor type *i* is calculated by multiplying the number of staff required to perform the proposed activity, N_i; the hours required per staff member to perform the proposed activity, H_i; the mean hourly wage of staff of labor type *i*, W_i; and the loaded wage factor of staff of labor type i, L_i. The total non-labor cost

is the sum of the non-labor costs for each non-labor cost type *j* (e.g., consulting costs) multiplied by the number of affected entities that will incur non-labor costs, A_j.

4. Subject-by-Subject Analysis

The Department's analysis below covers the expected impacts of the following proposed provisions of the WIOA NPRM against the baseline of the current practice under WIA: (a) New State Workforce Development Board Membership Requirements; (b) Development and Continuous Improvement of the Workforce Development System; (c) Development of Statewide Policies Affecting the State's One-stop System; (d) Development of Strategies for Technological Improvements; (e) State Plan Modification; (f) Identification of Regions; (g) Appoint New Local Workforce Development Board and Appropriate Firewalls; (h) Career Pathways Development;

(i) Development of Proven and Promising Practices; (j) Technology; (k) Selection of the One- stop

Operator; (l) Coordination with Education Providers; (m) Regional Plans; (n) Local and Regional Plan Modification; (o) Improved Information about Potential Training Program Providers; (p) Sanctions on Under-performing States; (q) Colocation of Wagner-Peyser Services;

(r)) Partners Required to Pay their Share for Proportionate Use of One-stop Delivery System; (s) Establishing Training Provider Eligibility Procedures, Including Adding Registered Apprenticeship; (t) Determining Eligibility of New and Previously Eligible Providers; (u) Biennial Review of Eligibility; (v) Disseminating the Training Provider List with Accompanying Information; and (w) Migrant and Seasonal Farmworker (MSFW) Housing.

The Department emphasizes that many of the proposed provisions in this WIOA-required NPRM are also existing requirements under WIA. For example, the requirement that States "prepare annual reports" is a current requirement under WIA that States routinely undertake.

Accordingly, our regulatory analysis focuses on "new" benefits, costs, and transfers that can be

attributed exclusively to the enactment of WIOA, as addressed in this NPRM. Much of WIA's infrastructure and operations are carried forward under WIOA and, therefore, are not considered "new" cost burdens under this NPRM.

a. New State Workforce Development Board Membership Requirements

States must establish State WDBs in accordance with the requirements of WIOA sec.

101. Under WIOA sec. 101(b)(1)(C)(i), the majority of the State WDB representatives must be from businesses or organizations in the State. These representatives must be owners or chief executives or

operating officers of the businesses or executives with optimum policy-making or hiring authority. WIOA sec. 101(b)(1)(C)(iii)(I) requires the Governor to appoint to the State WDB representatives of government that include the lead State officials with primary responsibility for each core program and two or more Chief Elected Officials (CEOs) that represent both cities and counties, where appropriate. In accordance with WIOA sec. 101(b)(2), State WDB membership must represent the diverse geographic areas of the State.

Costs

To estimate State WDB costs, the Department multiplied the estimated average number of managers per State (1) by the time required to adjust the State WDB membership (20 hours) and by the hourly compensation rate. We repeated the calculation for the following occupational categories: legal counsel staff (1 staff member for 15 hours), technical staff (2 staff for 20 hours each), and administrative staff (1 staff member for 20 hours). We summed the labor cost for all four personnel categories ($5,597) and multiplied the result by the number of States (56). This would result in a one-time cost of $313,435 in the first year of the proposed rule, which amounts to an average annual cost of $31,343.

b. Development and Continuous Improvement of the Workforce Development System

WIOA sec. 101(d)(3)(A) through (G) require that the State WDB assist the Governor in the development and continuous improvement of the State's workforce development system, including identifying barriers and means for removing barriers to aligning programs and activities; developing

or expanding sector-based training and career pathways proven to support individuals to seeking to enter and retain employment; developing customer outreach strategies; identifying regions and designating local workforce development areas; developing and continuously improving the one-stop system; and developing strategies to train and inform staff. Costs

The Department estimated the State WDBs' annual labor costs for developing or expanding sector strategies by multiplying the estimated average number of managers per State

(1) by the time required to review the workforce development system (300 hours) and the hourly compensation rate. We performed the same calculation for the technical staff (2 staff for 1,260 hours each). We summed the labor cost for both categories ($190,516) and multiplied the result by the number of States that do not have extensive and systematic sector strategies (21). Over the 10-year period, this calculation yields an estimated recurring annual cost of $4,000,838.

Similarly, the State WDBs' annual labor cost for expanding career pathways strategies was estimated by multiplying the estimated average number of managers per State (1) by the time required to review the workforce development system (300 hours) and the hourly compensation rate. The Department repeated the calculation for the technical staff (2 staff for 1,260 hours each). We summed the labor cost for the two occupational categories ($190,516) and multiplied the result by the number of States that do not have policies for career pathways

(27).[17] Over the 10-year period, this calculation yields an estimated recurring annual cost of

$5,143,934.

The Department estimated the labor cost that State WDBs would incur to identify regions by

multiplying the estimated average number of managers per State (1) by the time required to review the workforce development system (40 hours) and the hourly compensation rate. We performed the same calculation for the following occupational categories: legal counsel staff (1 staff member for 40 hours), technical staff (1 staff member for 80 hours), and administrative staff (1 staff member for 20 hours). We summed the labor cost for all four personnel categories ($11,268) and multiplied the result by the number of States (56) to estimate this one-time cost of

$631,001. Over the 10-year period, this calculation yields an average annual cost of $63,100. The sum of these costs yields a total one-time cost of $631,001 and an annual cost of

$9,144,772, which results in a total average annual cost of $9,207,872 for individuals from the State level to review the workforce development system.

c. Development of Statewide Policies Affecting the State's One-stop System

Under WIOA sec. 101(d)(6), State WDBs must assist State Governors in developing and reviewing statewide policies affecting the coordinated provision of services through the State's one-stop delivery system, including policies concerning objective criteria for Local Boards to assess one-stop centers, guidance for the allocation of one-stop center infrastructure funds, and policies relating to the roles and contributions of one-stop partners within the one-stop delivery system.

[17] The number of States that have not established career pathways is provided in the "National Dialogue on Career Pathways Viewing Party Guide."

Costs

The Department estimated the labor cost that State WDBs would incur by multiplying the estimated average number of managers per State (1) by the time required to provide objective criteria and procedures (40 hours) and the hourly compensation rate. We performed the same calculation for the legal counsel staff (1 staff member for 40 hours) and technical staff (2 staff for 120 hours). We summed the labor cost for all three personnel categories ($21,469) and multiplied the result by the number of States (56) to estimate this one-time cost at $1,202,284, which results in an average annual cost of $120,228.

d. Development of Strategies for Technological Improvements

Under WIOA sec. 101(d)(7), State WDBs must assist State Governors in the development of strategies for technological improvements to facilitate access and quality of services and activities provided through the one-stop delivery system. These strategies include improvements to enhance digital literacy skills, accelerate acquisition of skills and recognized post-secondary credentials by participants, strengthen professional development of providers and workforce professionals, and ensure technology is accessible to individuals with disabilities and individuals residing in remote areas.

Costs

The Department estimated the labor cost that State WDBs would incur by multiplying the estimated average number of managers per State (1) by the time required to develop strategies (20 hours) and the hourly compensation rate. We repeated the calculation for the technical staff (1 staff member for 40 hours). We summed the labor cost for both categories ($4,094) and multiplied the result by the number of States (56) to estimate a recurring annual cost of

$229,291.

e. State Plan Modification

Under WIOA sec. 102(c)(3)(B), a Governor may submit a modification of its Unified State Plan at any time during the 4-year period of the Plan. Under WIOA sec. 102(c)(3)(A), at a minimum, a State is required to submit modifications to its Unified State Plan at the end of the first 2-year period of any 4-year plan and also under specific circumstances.

The Department expects that the initial 4-year State Plans would be highly speculative.

Therefore, we anticipate that some States would make substantial modifications to the State Plans based on the experiences gained by operating under WIOA for the first two years. Based on past experience, we do not expect any subsequent modifications to present a substantial burden.

<u>Costs</u>

The Department estimated the labor cost the State WDBs would incur by multiplying the

estimated average number of managers per State (1) by the time required to review and modify a 4-year State Plan (10 hours) and the hourly compensation rate. We repeated the calculation for the following labor categories: legal counsel staff (1 staff member for 4 hours), technical staff (2 staff for 10 hours each), and administrative staff (1 staff member for 4 hours). We summed the labor cost for all four personnel categories ($2,411) and multiplied the result by the number of States (56) to estimate this one-time cost as $135,005, which results in an average annual cost of

$13,501.

f. Identification of Regions

Under WIOA sec. 101(d)(3)(E), State WDBs must assist State Governors in the identification of regions, including planning regions, for the purposes of WIOA sec. 106(a), and the designation of local areas under WIOA sec. 106, after consultation with Local Boards and

CEOs. According to WIOA sec. 106(a)(1), identification of regions is part of the process for developing the State Plan, and is necessary to receive an allotment under other provisions of the statute.

Costs

The Department estimated this labor cost for State WDBs by first multiplying the estimated average number of managers per State (2) by the time required to identify regions in the State (40 hours) and the hourly compensation rate. We performed the same calculation for the following occupational categories: legal counsel staff (1 staff member for 10 hours), technical staff (3 staff for

15 hours each), and administrative staff (2 staff for 10 hours each). We summed the labor cost for all four personnel categories ($9,833) and multiplied the result by the number of States (56) to estimate this cost as $550,633, occurring in 2016 and 2020 and resulting in an average annual cost of $110,127.

g. Appoint New Local Workforce Development Board and Appropriate Firewalls

The Local WDB is appointed by the CEOs in each local area in accordance with State criteria established under WIOA sec. 107(b), and is certified by the Governor every two years, in accordance with WIOA sec. 107(c)(2). The procedures for sole-source selection of one-stop operators include requirements about maintaining written documentation and developing appropriate firewalls and conflict-of-interest policies. A Local Board can be selected as a one- stop operator through a sole-source procurement only if the board establishes sufficient firewalls and conflict-of-interest policies and procedures that are approved by the Governor.

Costs

The Department estimated the labor costs incurred by WDBs by multiplying the estimated average number of managers per WDB (1) by the time required to appoint a new Local

Board (20 hours) and the hourly compensation rate. We performed the same calculation for the following occupational categories: legal counsel staff (1 staff member for 15 hours), technical staff (2 staff for 20 hours each), and administrative staff (1 staff member for 20 hours). We summed the labor cost for the four occupational categories ($5,597) and multiplied the result by the number of

WDBs (580) to estimate this one-time cost as $3,246,289, which results in an average annual cost of $324,629.

Additionally, the Department estimated the labor cost for WDBs to develop written agreements by multiplying the estimated average number of managers per WDB (1) by the time required to develop written agreements (8 hours) and the hourly compensation rate. We repeated the calculation for the legal counsel staff (1 staff member for 8 hours) and technical staff (1 staff member for 20 hours). We summed the labor cost for the three occupational categories ($2,411) and multiplied the result by the number of WDBs (580) to estimate this one-time cost as

$1,398,484, which results in an average annual cost of $139,848.

In total, these calculations yield a one-time cost of $4,644,773 which results in an average annual cost of $464,477 for individuals from the local level to appoint new boards and set administrative firewalls that avoid conflicts of interest.

h. Career Pathways Development

Under WIOA sec. 107(d)(5), Local Boards must, with representatives of secondary and post-secondary education programs, lead efforts to develop and implement career pathways within the local area by aligning the employment, training, education, and supportive services that are needed by adults and youth, particularly individuals with barriers to employment.

<u>Costs</u>

The Department estimated the labor cost for WDBs by first multiplying the estimated average number of managers per WDB (1) by the time required to develop and implement career pathways (80 hours) and the hourly compensation rate. We performed the same calculation for the following occupational categories: legal counsel staff (1 staff member for 10 hours), technical staff (1 staff member for 80 hours), and administrative staff (1 staff member for 20 hours). We summed the labor cost for all four personnel categories ($12,186) and multiplied the result by the number of WDBs (580) to estimate this recurring annual cost of $7,067,938.

i. Development of Proven and Promising Practices

Under WIOA sec. 107(d)(6), Local Boards must lead efforts in the local area to identify and promote proven and promising strategies and initiatives for meeting the needs of employers, workers, and jobseekers (including individuals with barriers to employment), and identify and disseminate information on proven and promising practices carried out in other local areas for meeting such needs.

Costs

For State WDBs, the Department estimated this labor cost by first multiplying the estimated average number of managers per State (1) by the time required to identify and promote proven strategies (20 hours) and the hourly compensation rate. We performed the same calculation for the following occupational categories: legal counsel staff (1 staff member for 10 hours), technical staff (1 staff member for 40 hours), and administrative staff (1 staff member for 15 hours). We summed the labor cost for all four personnel categories ($5,143) and multiplied the result by the number of States (56) to estimate this recurring annual cost of $287,985.

j. Technology

Under WIOA sec. 107(d)(7), Local Boards must develop strategies for using technology to maximize the accessibility and effectiveness of the local workforce development system for employers, workers, and jobseekers by facilitating access to services provided through the one-stop delivery system, facilitating connections among the intake and case-management information systems of the one-stop partner programs, identifying strategies for better meeting the needs of individuals with barriers to employment, and leveraging resources and capacity within the local workforce development system.

Costs

The Department estimated the cost for Local WDBs by first multiplying the estimated average number of managers per WDB (1) by the time required to develop technology strategies (20 hours) and the hourly compensation rate. We performed the same calculation for the technical staff (1 staff member for 40 hours). We summed the labor cost for these two categories ($4,094) and multiplied the result by the number of WDBs (580) to estimate this recurring annual cost of $2,374,798.

k. Selection of One-stop Operators

Under WIOA sec. 107(d)(10)(A), consistent with WIOA sec. 121(d), and with the agreement of the CEO for the local area, Local Boards must designate or certify one-stop operators and may terminate for cause the eligibility of such operators. WIOA sec. 121(d)(2)(A) allows for selection of a one-stop operator only through a competitive process.

Costs

The Department estimated the cost for Local WDBs by first multiplying the estimated average number of managers per WDB (1) by the time required to designate one-stop operators (80 hours) and the hourly compensation rate. We performed the same calculation for the following occupational categories: legal counsel staff (1 staff member for 40 hours), technical staff (2 staff for 120 hours each), and administrative staff (1 staff member for 40 hours). We summed the labor costs for these four personnel categories ($25,393) and multiplied the result by the number of WDBs (580) to estimate this quadrennial cost of $6,348,180. Over the 10-year period, this calculation yields an average annual cost of $1,904,454.

l. Coordination with Education Providers

Under WIOA sec. 107(d)(11), Local Boards must coordinate activities with education and training providers in the local area, including providers of workforce investment activities, providers of adult education and literacy activities under title II of WIOA, certain providers of career and technical education, and local agencies administering certain plans under the Rehabilitation Act of 1973.

Costs

For State WDBs, the Department estimated this labor cost by first multiplying the estimated average number of managers per State (1) by the time required to coordinate activities with local education and training providers (30 hours) and the hourly compensation rate. We performed the

same calculation for the following occupational categories: legal counsel staff (1 staff member for 10 hours), technical staff (1 staff member for 40 hours), and administrative staff (1 staff member for 10 hours). We summed the labor cost for all four personnel categories ($5,706) and multiplied the result by the number of States (56) to estimate this recurring annual cost of $319,528.

m. Regional Plans

WIOA sec. 106(c)(2) requires Local Boards and CEOs within a planning region to prepare, submit, and obtain approval of a single regional plan that includes a description of the activities described in the statute and that incorporates local plans for each of the local areas in the planning region.

Costs

For Local WDBs, the Department estimated this cost by first multiplying the estimated average number of managers per WDB (2) by the time required to prepare, submit, and obtain approval of a single regional plan (20 hours) and the hourly compensation rate. We performed the same calculation for the following occupational categories: legal counsel staff (1 staff member for 8 hours), technical staff (2 staff for 40 hours), and administrative staff (1 staff member for 8 hours). We summed the labor cost for the four occupational categories ($8,916) and multiplied the result by the number of WDBs (580) to estimate this cost as $5,171,336, which occurs in 2016 and 2020. This results in an average annual cost of $1,034,267.

n. Local and Regional Plan Modification

Under WIOA sec. 108(a), each Local Board, in partnership with the CEO, must review the local plan every 2 years and submit a modification as needed, based on significant changes in labor market and economic conditions and other factors. These factors include changes to local economic conditions, changes in the financing available to support WIOA title I and partner- provided WIOA services, changes to the Local Board structure, or a need to revise strategies to meet performance goals. If the local area is part of a planning region, the Local Board must comply with WIOA sec. 106(c) in the preparation and submission of a regional plan.

Costs

For Local WDBs, the Department estimated the local plan modification cost by first multiplying the estimated average number of managers per WDB (1) by the time required to review and modify the 4-year plan (10 hours) and the hourly compensation rate. We performed

the same calculation for the following occupational categories: legal counsel staff (1 staff member for 4 hours), technical staff (2 staff for 10 hours), and administrative staff (1 staff member for 4 hours). We summed the labor cost for all four personnel categories ($2,411) and multiplied the result by the number of WDBs (580) to estimate this one-time cost of $1,398,269, occurring in 2018. Over the 10-year period, this calculation yields an average annual cost of

$139,827.

Similarly, the Department estimated the regional plan modification cost for Local WDBs by first multiplying the estimated average number of managers per regional board (2) by the time required to review and modify the 4-year plan (10 hours) and the hourly compensation rate. We

performed the same calculation for the following occupational categories: legal counsel staff (1 staff member for 4 hours), technical staff (2 staff for 20 hours each), and administrative staff (1 staff member for 5 hours). We summed the labor cost for all four personnel categories ($4,486) and multiplied the result by the number of regional boards (580) to estimate a cost of $1,345,766, occurring once every four years. Over the 10-year period, this calculation yields an average annual cost of $269,153.

The sum of these costs yields a 10-year cost of $4,089,800, which results in an average annual cost of $408,980 for individuals from the Local WDBs to review and modify the 4-year plan.

o. Improved Information about Potential Training Program Providers

WIOA sec. 116 establishes performance accountability measures and performance reporting requirements to assess the effectiveness of States and local areas in achieving positive outcomes for individuals served by the core programs. The performance accountability measures will provide workers with better information about potential training program

providers and enable them to make more informed choices about programs to pursue. The information analyzed and published by the boards about local labor markets also will assist trainees and providers in targeting their efforts and developing reasonable expectations about outcomes.

Costs

At the State level for DOL programs, the Department estimated this labor cost by first multiplying the estimated average number of managers per State (1) by the time required to provide

additional information about eligible training program providers (32 hours) and the hourly compensation rate. We performed the same calculation for the technical staff (2 staff for 40 hours each) and administrative staff (1 staff member for 80 hours). We summed the labor cost for all three personnel categories ($9,854) and multiplied the result by the number of States

(56) to estimate this recurring annual cost of $551,826.

p. Sanctions on Under-performing States

Section 116(f)(1)(B) of WIOA requires the Department to assess a sanction if "a State fails to submit a report under subsection (d) for any program year." Three reports are required under WIOA sec. 116(d): the State annual performance reports, the local area performance reports, and the ETP performance reports. Of these, only the State annual performance reports must be submitted by the State to the Secretary of Labor. Section 116(f)(1) of WIOA requires that sanctions for performance failure be based on the primary indicators of performance.

The sanctions will alter Federal transfer payments.[18] Transfer payments, as defined by

OMB Circular A-4, are payments from one group to another that do not affect total resources

[18] The Department transfers funds to each State through a formal grant process. States may set aside a portion of these funds for discretionary use under WIOA. If a State were sanctioned, we would de-obligate the funds comprising the penalty from the State's set-aside, thereby reducing funding without incurring additional costs.

available to society. The Department requests comment and data that would allow for estimation of the transfer that would result from the sanctions provision.

Costs

At the State level, the Department estimated the costs resulting from labor requirements by first multiplying the estimated average number of managers per State (1), the time required to evaluate State performance (40 hours), and the hourly compensation rate. We performed the same calculation for technical staff (1 staff member for 80 hours) and administrative staff (1 staff member for 40 hours). We summed the labor cost for all three personnel categories ($9,302) and multiplied the result by the number of States (56) to estimate a recurring annual transfer of

$520,939.

The Department estimates that 56 States will be impacted by this annual cost because we have determined that 56 States will calculate, annually, the performance levels of each State's core programs. Each State will do this on an annual basis in order to determine if the State is subject to sanctions, as discussed in proposed § 677.190 of this part, by comparing those levels against the negotiated levels of performance that the State has provided for in the State Plan.

q. Colocation of Wagner-Peyser Services

WIOA sec. 121(e)(3) requires colocation of Wagner-Peyser Employment Service offices and one-stop centers established under title I of WIOA. Colocation is intended to improve service delivery, avoid duplication of services, and enhance coordination of services, including location of staff to ensure access to services in underserved areas.

Costs

At the State level for DOL programs, the Department estimated this labor cost by first multiplying the estimated average number of managers per State (10), the time required to collocate Wagner-Peyser Services (40 hours), and the hourly compensation rate. We performed the same calculation for the following occupational categories: legal counsel staff (10 staff for 10 hours each), technical staff (20 staff at 25 hours each), and administrative staff (10 staff for 5 hours each). We summed the labor cost for all four personnel categories ($69,415) and multiplied the result by the number of States without collocated Wagner-Peyser Services (10) to estimate a one-time cost of $694,152, which results in an annual cost of $69,415.

At the State level, the Department estimated consultant costs by multiplying the estimated consultant costs ($10,000) by the number of States without collocated Wagner-Peyser Services (10). This calculation yields an estimated one-time cost of $100,000, resulting in an average annual cost of $10,000.

At the local level, the Department estimated labor costs by first multiplying the estimated average number of managers for all local entities within a State (100), the time required to collocate

Wagner-Peyser Services (40 hours), and the hourly compensation rate. We performed the same calculation for the technical staff (200 staff for 25 hours each) and administrative staff (100 staff for 5 hours each). We summed the labor cost for all three personnel categories ($631,098) and multiplied the result by the number of local areas without collocated Wagner- Peyser offices and one-stops (100) to estimate a one-time cost of $63,109,800, resulting in an annual cost of $6,310,980.

The sum of these costs yields a one-time cost of $63,903,952, which results in an average annual cost of $6,390,395 for individuals from the State and local levels to collocate Wagner- Peyser Services.

r. Partners Required to Pay their Share for Proportionate Use of One-stop Delivery System

An important goal under both the local and State funding mechanisms is to ensure that each one-stop partner contributes its proportional share to the funding of one-stop infrastructure costs, consistent with Federal cost principles. Under WIOA sec. 121(h), in general, State Governors must ensure that costs are appropriately shared by one-stop partners. Contributions must be based on proportional share of use and all funds must be spent solely for allowable purposes in a manner consistent with the applicable authorizing statute and all other applicable legal requirements, including Federal cost principles.

This provision will alter Federal transfer payments, and the Department requests comment and data that would allow for estimation of this rule-induced transfer.[19]

<u>Costs</u>

At the State level, the Department estimated costs related to this provision (e.g., the cost of

developing memoranda of understanding) by first multiplying the estimated average number of managers per State (50), the time required for States to comply with payment requirements proportional to use of one-stop delivery systems (40 hours), and the hourly compensation rate. We performed the same calculation for the following occupational categories: legal counsel staff (50 staff for 1 hour each), technical staff (100 staff for 40 hours each), and administrative staff (50 staff for 5 hours each). We summed these products for all four personnel categories ($419,560) and multiplied the result by the number of States that need to pay their proportional

[19] The Department distributes funds through a combination of multi-step formula distributions, Title III (Wagner- Peyser) distribution, and national grant competitions that award funds directly to partners. The Department supplies funding to cover payments for partners proportionate to their use of one-stop delivery systems, although partners may instead opt to use pay-in-kind or other leveraged funds.

share (54) to estimate transfer of $22,656,251 occurring once every three years, resulting in an average annual transfer of $6,796,875.

s. Establishing Training Provider Eligibility Procedures, Including Adding Registered Apprenticeship

Under WIOA sec. 122, the Governor, after consultation with the State WDB, must establish criteria, information requirements, and procedures regarding the eligibility of providers of training services to receive funds under WIOA for the provision of training services in local areas in the State.

Training providers, including those operating under the individual training account exceptions, must qualify as ETPs, except for those engaged in on-the-job and customized training (for which the Governor should establish qualifying procedures). Registered apprenticeship programs are included in the ETPL, provided the program remains eligible. Only providers that the State determines to be eligible under WIOA sec. 122 may receive training funds under WIOA title I-B.

Costs

At the State level, the Department estimated this cost by first multiplying the estimated average number of managers per State (1), the time needed to establish procedures for training provider eligibility (40 hours), and the hourly compensation rate. We performed the same calculation for the legal counsel staff (1 staff member for 20 hours) and technical staff (1 staff member for 80 hours). We summed the labor cost for all three personnel categories ($9,450) and multiplied the result by the number of States that need to pay their proportional share (56) to estimate this one-time cost of $529,202, resulting in an annual cost of $52,920.

t. Determining Eligibility of New and Previously Eligible Providers

Under the requirements of WIOA sec. 122, the procedures for determining eligibility of providers are established by the Governor, after consultation with the State WDB and include application and renewal procedures, eligibility criteria, and information requirements.

Costs

At the State level for DOL programs, the Department estimated this labor cost by first multiplying the estimated average number of managers per State (1), the time needed to determine

provider eligibility (40 hours), and the hourly compensation rate. We performed the same calculation for the technical staff (2 staff for 110 hours each) and administrative staff (2staff for 50 hours each). We summed the labor cost for all three personnel categories ($20,386) and multiplied the result by the number of States (56) to estimate a one-time cost of

$1,141,628, resulting in an annual cost of $114,163.

u. Biennial Review of Eligibility

Under WIOA sec. 122(c)(2), training provider eligibility criteria established under this provision must include procedures for biennial review and renewal of eligibility for providers of training services.

Costs

At the State level, the Department estimated this labor cost by first multiplying the estimated average number of managers per State (1), the time needed to perform the eligibility review (30 hours), and the hourly compensation rate. We performed the same calculation for the technical staff (2 staff for 60 hours each) and administrative staff (2 staff for 30 hours each). We summed the labor cost for all three personnel categories ($11,846) and multiplied the result by the number of States (56) to estimate cost of $663,395 that occurs four times over the 10-year analysis period, that is, an annual cost of $265,358.

v. Disseminating the Training Provider List with Accompanying Information

Under WIOA sec. 122(d), the Governor must ensure preparation of an appropriate list of providers determined to be eligible under this section to offer a program in the State (and, as appropriate, in a local area), accompanied by information identifying the recognized post- secondary credential offered by the provider and other appropriate information. The list must be provided to the Local Boards in the State, and made available to such participants and to members of the public through the one-stop delivery system in the State.

Costs

At the State level, the Department estimated this labor cost by first multiplying the estimated average number of managers per State (1), the time needed to disseminate the ETPL with accompanying information (30 hours), and the hourly compensation rate. We performed the same calculation for the following occupational categories: technical staff (2 staff for 80 hours each), administrative staff (2 staff for 45 hours), and IT reprogramming (database development) staff (2 staff for 125 hours each). We summed the labor cost for all four personnel categories ($30,449) and multiplied the result by the number of States (56) to estimate a one-time cost of $1,705,125, resulting in an annual cost of $170,513.

w. Migrant and Seasonal Farmworker Housing

While bringing the Department's housing standards at 20 CFR 654 (ETA Standards) under the Occupational Safety and Health Administration (OSHA) provisions set forth in 29 CFR

1910.142 will not completely remedy many of the inadequate housing conditions common among agricultural housing facilities, the Department anticipates the change will: 1) update the housing standards as the OSHA provisions conform to slightly more modern standards; 2) streamline the compliance process for employers who will only need to look to one place to

comply with housing standards; and 3) ease the administrative burden on State and Federal employees who conduct housing inspections as they will only need to learn and rely upon one set of housing standards.

In estimating the impact of the proposed changes to 20 CFR 654, the Department consulted various agencies within DOL to uncover pertinent data. Such data includes the number of H-2A employers approved through the Office of Foreign Labor Certification (OFLC). The Department believes that reviewing H-2A employer data is useful as it represents a subset of population (and, therefore, a minimum) of the total number of employers that may be offering housing to agricultural workers and who may be affected by the proposed changes. The

Department estimates that of the approximately 6,400[20] employers nationally who hire foreign

workers under the H-2A program and who provide housing, the majority will not be affected by the proposed changes because it estimates that, nationally, OSHA housing standards apply more frequently than the ETA Standards in the context of housing investigations. Specifically, the Department estimates that every region, except the Northeast and Pacific Northwest, has agricultural housing that predominantly falls under the OSHA standards. However, the situation will vary from State to State. For example, Colorado reported that approximately 84 percent of the agricultural housing inspected in the State from July 1, 2014 to January 29, 2015 falls under the ETA standards. Wyoming reported that 64 percent of the housing inspections over the course of a year fell under

ETA standards.

However, the housing data currently available to DOL is limited. The Department collects agricultural housing information as it pertains to employers' compliance with the appropriate standards. The Department does not collect or track the number of agricultural

[20] This number is derived from OFLC data on employers that have submitted H-2A applications. The Department extrapolated the number of unique employers from the full list of applications to avoid duplication and to identify the fewest employers that may be impacted by these proposed changes.

housing units nationally that fall under the ETA versus the OSHA standards. To better understand the impact of the proposed regulations, the Department would like to know: 1) the approximate number of agricultural housing units in the United States provided by agricultural employers for farmworkers; 2) the approximate percentage of the total farmworker housing units that currently fall under the ETA Standards set forth in 20 CFR 654; and 3) the estimated cost of bringing those housing units from the ETA Standards into compliance with the OSHA Standards. The Department would appreciate public feedback on the aforementioned data elements.

Specifically, it would be helpful for DOL's analysis if: 1) there are State Workforce Agencies or States that would share any data on the total number of employer-provided agricultural housing units in the State and the percentage of those that are subject to the ETA Standards; and 2) agricultural employers would furnish estimated costs for bringing their farmworker housing units from ETA to OSHA Standards. The Department appreciates any such information that could assist in the development of the overall impact analysis.

5. Summary of Analysis

Exhibit 3 summarizes the annual and total costs of the proposed rule. It summarizes the total 10-year total costs and the average annualized costs for each provision of the proposed rule. The exhibit also presents high-level benefits resulting from full WIOA implementation for each provision. These qualitative forecasts are predicated on program experience and are outcomes for which data will only become available after implementation. The Department estimates the average annual cost of the proposed rule over the 10-year period of analysis at $38.4 million.

The largest contributor to this cost is the provision related to the development and improvement of the workforce development system, which amounts to an estimated $9.2 million per year. The next largest cost results from career pathways development at $7.1 million per year, followed by

the cost of partners required to pay their share for proportionate use of one-stop delivery system at an estimated $6.8 million per year.

EXHIBIT 3: Costs of the Proposed Rule by Provision				
Provision	**Total 10-Year Cost (undiscounted)**	**Average Annual Cost (undiscounted)**	**Percent of Total Cost**	**Qualitative**
(a) New State Workforce Development Board	$312,425	$31,243	0.08%	Policy implementa reduced size and n
(b) Development and Continuous Improvement of the	$92,078,720	$9,207,872	23.96%	Mission clarificati commitment shoul

(c) Development of Statewide Policies Affecting the State's	$1,292,284	$129,228	0.21%	Mission clarificati overall system bui
(d) Development of Strategies				Recognition of the by technology and capabilities especi
				More efficient use enhanced custome program managem
				Enhanced employe as a result of recog markets (without a

EXHIBIT 3: Costs of the Proposed Rule by Provision				
Provision	**Total 10-Year Cost (undiscounted)**	**Average Annual Cost (undiscounted)**	**Percent of Total Cost**	**Qualitative**
(g) Appoint New Local Workforce Development Board	$4,644,772	$464,477	1.21%	Efficient use of bo conflicts of interes
(h) Career Pathways Development	$70,679,280	$7,067,928	18.29%	Improved educatio outcomes; potentia
(i) Development of Proven and Promising Practices	$2,879,850	$287,985	0.75%	Improved job plac service

				Improved custome decision-making f level data; reduced collaboration acros
(k) Selection of the One-stop Operator	$19,044,540	$1,904,454	4.95%	Improved public c avoided conflicts a
(l) Coordination with Education Providers	$2,195,282	$219,528	0.83%	Improved preparat youth for future jo

EXHIBIT 3: Costs of the Proposed Rule by Provision				
Provision	**Total 10-Year Cost (undiscounted)**	**Average Annual Cost (undiscounted)**	**Percent of Total Cost**	**Qualitative**
(m) Regional Plans	$10,242,671	$1,024,267	2.69%	Savings from expa increased services
(n) Local and Regional Plan Modification	$4,089,800	$408,980	1.06%	Increased coordina to resource efficie
(o) Improved Information about Potential Training Program Providers				Improved custome linkage of resourc accountability for
(p) Sanctions on Under-				Improved services funds; enhanced re performance impe

(q) Co-location of Wagner-				Reduced administr improved service c service; more effic
(r) Partners Required to Pay their Share for Proportionate Use of One-stop Delivery				Expanded system service delivery; a

EXHIBIT 3: Costs of the Proposed Rule by Provision				
Provision	**Total 10-Year Cost (undiscounted)**	**Average Annual Cost (undiscounted)**	**Percent of Total Cost**	**Qualitative**
(s) Establishing Training Provider Eligibility Procedures, Including Adding Registered				Increased training for youth; effectiv
(t) Determining Eligibility of New and Previously Eligible	$1,141,628	$114,162	0.29%	Increased transpar of ETPs; reduced i
(u) Biennial Review of Eligibility	$2,653,580	$265,358	0.69%	Increased competi better placements
(v) Disseminating the Training Provider List with	$1,705,125	$170,513	0.44%	More informed cu link of training res

(w) Migrant and Seasonal				More streamlined employers who wi one place to comp standards. Eased a State and Federal c
TOTAL	**$384,377,787**	**$38,437,778**	**100.00%**	

Note: Totals might not sum due to rounding.

Exhibit 4 summarizes the first-year cost of each provision of the proposed rule. The Department estimates the total first-year cost of the proposed rule at $94.6 million. The largest contributor to the first-year cost is the provision related to the colocation of Wagner-Peyser services $63.9 million. The next largest first-year cost results from development and continuous improvement of the workforce development system, amounting to $9.8 million, followed by the cost of career pathways development at $7.1 million.

EXHIBIT 4: First-Year Cost of the Proposed Rule by Provision		
	Total First-Year Cost	**Percent of Total First-Year Cost**
(a) New State Workforce Development Board Membership Provision	$313,435	0.33%
(b) Development and Continuous Improvement of the Workforce Development System	$9,775,773	10.34%
(c) Development of Statewide Policies Affecting the State Operating System	$1,202,284	1.27%
(d) Development of Strategies for Technological Improvement	$229,291	0.24%
(e) State Plan Modification	$0	0.00%
(f) Identification of Regions	$0	0.00%

(g) Appoint New Local Workforce Development	$4,644,773	4.91%
(h) Career Pathways Development	$7,067,938	7.47%
(i) Development of Proven and Promising Practices	$287,985	0.30%
(j) Technology	$2,374,798	2.51%
(k) Selection of the One-stop Operator	$0	0.00%
(l) Coordination with Education Providers	$319,528	0.34%
(m) Regional Plans	$0	0.00%
(n) Local and Regional Plan Modification	$0	0.00%
(o) Improved Information about Potential Training	$551,826	0.58%
(p) Sanctions on Under-performing States	$520,939	0.55%
(q) Co-location of Wagner-Peyser Services	$63,903,952	67.57%

EXHIBIT 4: First-Year Cost of the Proposed Rule by Provision		
(r) Partners Required to Pay their Share for	$0	0.00%
(s) Establishing Training Provider Eligibility Procedures, Including Adding Registered	$529,202	0.56%
(t) Determining Eligibility of New and Previously	$1,141,628	1.21%
(u) Biennial Review of Eligibility	$0	0.00%
(v) Disseminating the Training Provider List with	$1,705,125	1.80%
(w) Migrant and Seasonal Farmworker (MSFW)	Not quantified.	
TOTAL	**$94,568,477**	**100.00%**

Note: Totals might not sum due to rounding.

Exhibit 5 presents the per-year and total estimated costs of the proposed rule. The total undiscounted cost of the rule sums to $384.4 million over the 10-year analysis period, which is an average annual cost of $38.4 million per year. In total, the 10-year discounted costs of the

proposed rule range from $305.6 million to $345.9 million (with 7- and 3-percent discounting, respectively).

To contextualize the cost of the proposed rule, the Department of Labor's average annual budget for WIA over the past three fiscal years was $2.8 billion. Thus, the annual additional cost of implementing the proposed rule is between 1.1 percent and 1.2 percent of the average annual cost of implementing WIA over the last three fiscal years (with 3 percent and 7 percent discounting, respectively).

EXHIBIT 5: Monetized Costs of the Proposed DOL Rule	
Year	**Total Costs**
2015	$94,568,478
2016	$32,567,226
2017	$43,153,328
2018	$24,039,512
2019	$20,497,077
2020	$55,886,872
2021	$20,497,077
2022	$22,506,238
2023	$43,153,328
2024	$27,508,652
Undiscounted 10-year Total	**$384,377,787**
10-year Total with 3% Discounting	**$345,897,084**
10-year Total with 7% Discounting	**$305,556,353**
10-year Average	**$38,437,778**
Annualized with 3% Discounting	**$40,549,690**
Annualized with 7% Discounting	**$43,504,350**

Note: Totals might not sum due to rounding.

Benefits

The Department was unable to quantify the benefits associated with the proposed rule because of data limitations and a lack of operational (WIOA) data or evaluation findings on the provisions of the proposed rule. Thus, the Department is unable to provide monetary estimates of several important benefits to society, including the increased employment opportunities for unemployed or under-employed U.S. workers, benefits of colocation of Wagner-Peyser Services, enhanced ETP process, regional planning, and evaluation of State programs. In support of a State's strategic plan and goals, State-conducted evaluation and research of programs would enable each State to test various interventions geared toward State conditions and opportunities. Results from such evaluation and research, if used by States, could improve service quality and effectiveness and, thus, potentially lead to higher employment rates and earnings among

participants. Implementing various innovations that have been tested and found effective could also lead to lower unit costs and increased numbers of individuals served within a State. Sharing the findings nationally could lead to new service or management practices that other States could adopt to improve participant results, lower unit costs, or increase the number served.

The Department invites comments regarding possible data sources or methodologies for estimating these benefits. In addition, the Department invites comments regarding other benefits that might arise from the proposed rule and how these benefits could be estimated.

The Department provides a qualitative description of the anticipated WIOA benefits below. These qualitative forecasts are predicated on program experience and are outcomes for which data will only become available after implementation. Although these studies are largely based on programs and their existing requirements under WIA, we believe that they capture the essence of the societal benefits that can be expected from this proposed rule.

Training's impact on placement. A recent study found that flexible and innovative

training which is closely related to a real and in-demand occupation is associated with better labor market outcomes for training participants. Youth disconnected from work and school can benefit from comprehensive and integrated models of training that combine education, occupational skills, and support services.[21] However, the study noted that evidence for effective employment and training-related programs for youth is less extensive than for adults, and that there are fewer positive findings from evaluations.[22] The WIA youth program remains largely

untested.[23] One study found that WIA training services increase placement rates by 4.4 percent

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[21] Department of Labor et. al. "What Works In Job Training: A Synthesis of the Evidence." July 2014.

[22] Ibid.

[23] Decker, Paul T. and Jillian A. Berk. 2011. "Ten Years of the Workforce Investment Act (WIA): Interpreting the Research on WIA and Related Programs." Journal of Policy Analysis and Management 30 (4): 906–926.

among adults and by 5.9 percent among dislocated workers,[24] while another study concluded that placement rates are 3 to 5 percent higher among all training recipients.[25]

Participants in occupational training had a "5 percentage points higher reemployment rate than those who received no training, and reemployment rates were highest among recipients of on-

the-job training, a difference of 10 to 11 percentage points."[26] However, the study found that training did not correspond to higher employment retention or earnings.[27] A Youth Opportunity Grant Initiative study found that Youth Opportunity was successful at improving outcomes for high-poverty youth. Youth Opportunity also increased the labor-force participation rate overall and for subgroups, including 16- to 19-year-old adolescents, women, African Americans, and in-school youth.[28] Department-sponsored research found that participants who received core services (often funded by Employment Services) and other services in American Job Centers were more likely to enter and retain employment.[29]

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[24] Hollenbeck, Kevin, Daniel Schroeder, Christopher T. King, and Wei-Jang Huang. "Net Impact Estimates for Services Provided through the Workforce Investment Act." Washington, DC: U.S. Department of Labor, 2005. Available at http://wdr.doleta.gov/research/keyword.cfm?fuseaction=dsp_puListingDetails&pub_id =2367&mp=y&start=81&sort=7.

[25] Heinrich, Carolyn J., Peter R. Mueser, and Kenneth R. Troske. "Workforce Investment Act Non-Experimental Net Impact Evaluation." Columbia, MD: IMPAQ International, LLC, 2009.

[26] Park, Jooyoun. "Does Occupational Training by the Trade Adjustment Assistance Program Really Help Reemployment? Success Measured as Matching." Washington, DC: U.S. Department of Labor, Employment and Training Administration, 2011.

[27] Park, Jooyoun. "Does Occupational Training by the Trade Adjustment Assistance Program Really Help Reemployment? Success Measured as Matching." Washington, DC: U.S. Department of Labor, Employment and Training Administration, 2011.

[28] Jackson, Russell H., Jamie Diamandopoulos, Carol Pistorino, Paul Zador, John Lopdell, Juanita Lucas-McLean, and Lee Bruno. "Youth Opportunity Grant Initiative (YO)." Houston, TX: Decision Information Resources, Inc., 2008. Available at http://wdr.doleta.gov/research/FullText_Documents/YO%20Impact%20and%20 Synthesis%20Report.pdf.

[29] Office of Policy Development and Research, U.S. Department of Labor. "Five-Year Research and Evaluation Strategic Plan Program Years 2012-2017." May 2013. Available at http://wdr.doleta.gov/research/keyword.cfm?fuseaction=dsp_resultDetails&pub_id=2516&mp=y.

Training's impact on wages. Before enactment of WIA, Job Training Partnership Act services had a modest but statistically significant impact on the earnings of adult participants.[30] WIA training increased participants' quarterly earnings by $660; these impacts persisted beyond two years and were largest among women.[31] WIA adult program participants who received core services (e.g. skill assessment, labor market information) or intensive services (e.g. specialized assessments, counseling) earned up to $200 more per quarter than non-WIA participants.

Participants who received training services in addition to core and intensive services initially earned

less but caught up within 10 quarters with the earnings of participants who only received core or intensive services; marginal benefits of training could exceed $400 per quarter. Earnings progressions were similar for WIA adult program participants and users of the labor exchange only.[32] WIA training services also improved participants' long-term wage rates, doubling earnings after 10 quarters over those not receiving training services.[33] However, WIA

participants who did not receive training earned $550 to $700 more in the first quarter after placement. The study also noted that individuals who did not receive training received effective short-term counseling that enabled them to gain an immediate advantage in the labor market.[34]

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[30] Barnow, Burt, and Daniel Gubits. "Review of Recent Pilot, Demonstration, Research, and Evaluation Initiatives to Assist in the Implementation of Programs under the Workforce Investment Act." Baltimore, MD: Johns Hopkins University, 2003. Available at http://wdr.doleta.gov/research/keyword.cfm?fuseaction=dsp_puListingDetails&pub_id=2365&mp=y&start=81&sort=7.

[31] Barnow, Burt, and Daniel Gubits. "Review of Recent Pilot, Demonstration, Research, and Evaluation Initiatives to Assist in the Implementation of Programs under the Workforce Investment Act." Baltimore, MD: Johns Hopkins University, 2003. Available at http://wdr.doleta.gov/research/keyword.cfm?fuseaction=dsp_puListingDetails&pub_id=2365&mp=y&start=81&sort=7.

[32]Earnings Progression among Workforce Development Participants: Evidence from Washington State." Eugene, OR: University of Oregon, 2011. Available at http://wdr.doleta.gov/research/

keyword.cfm?fuseaction=dsp_puListingDetails&pub_id=2468&mp=y&start=1&sort=7.

[33] Heinrich, Carolyn J., Peter R. Mueser, and Kenneth R. Troske. "Workforce Investment Act Non-Experimental Net Impact Evaluation." Columbia, MD: IMPAQ International, LLC, 2009.

[34] Heinrich, Carolyn J., Peter R. Mueser, and Kenneth R. Troske. "Workforce Investment Act Non-Experimental Net Impact Evaluation." Columbia, MD: IMPAQ International, LLC, 2009. Available at http://wdr.doleta.gov/research/FullText_Documents/Workforce%20 Investment%20Act%20Non-Experimental%20Net%20Impact%20Evaluation%20-%20Final%20Report.pdf.

Another Department program, the Job Corps program for disadvantaged youth and young adults, produced sustained increases in earnings for participants in their early twenties. Students who completed Job Corps vocational training experienced average earnings increases by the fourth follow-up year over the comparison group, whereas those who did not complete training experienced no increase.[35]

Another publication also noted that, on average, adults experienced a $743 quarterly post-exit earnings boost.[36]

Those who completed training experienced a 15-percent increase in employment rates and an increase in hourly wages of $1.21 relative to participants without training.[37] Participation in WIA training also had a distinct positive, but smaller, impact on employment and earnings, with employment 4.4 percentage points higher and quarterly earnings $660 higher than comparison group members.

The following are channels through which these benefits might be achieved:

Better information for workers. The accountability measures would provide workers

with higher-quality information about potential training program providers and enable them to make better informed choices about which programs to pursue. The information analyzed and published by the WDBs about local labor markets also would help trainees and providers target their efforts and develop reasonable expectations about outcomes.

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[35] Gritz, Mark, and Terry Johnson. "National Job Corps Study: Assessing Program Effects on Earnings for Students Achieving Key Program Milestones." Seattle, WA: Battelle Memorial Institute, 2001. Available at http://wdr.doleta.gov/research/keyword.cfm?fuseaction=dsp_puListingDetails&pub_id=2257&mp=y&start=141&so rt=7.

[36] Hollenbeck, Kevin, Daniel Schroeder, Christopher T. King, and Wei-Jang Huang. "Net Impact Estimates for Services Provided through the Workforce Investment Act." Washington, DC: U.S. Department of Labor, 2005. Available at http://wdr.doleta.gov/research/FullText_Documents/Net%20Impact%20Estimates%20for%20Services%20Provided%20through%20the%20Workforce%20Investment%20Act - %20Final%20Report.pdf.

[37] Needels, Karen, Jeanne Bellotti, Mina Dadgar, and Walter Nicholson. "Evaluation of the Military Base National

Emergency Grants: Final Report." Princeton, NJ: Mathematica Policy Research, 2006.

Consumers of educational services, including disadvantaged and displaced workers, require reliable information on the value of different training options to make informed choices. Displaced workers tend to be farther removed from schooling and lack information about available courses and the fields with the highest financial return.[38] Given these information gaps and financial pressures, it is important that displaced workers learn of the returns to various training plans.[39] Still, one study determined that the cost-effectiveness of WIA job training for disadvantaged workers is "modestly positive" due perhaps to the limited sample of States on which the research was based.[40]

Sanctions to under-performing States. WIOA requires the Department to place sanctions

on States that under-perform for two consecutive years. The sanction would be five percent of set-aside funding. Having a clear and credible sanction will serve as an incentive for States and local entities to monitor performance more effectively and to intervene early in order to avoid the loss of funding.

Evaluations of WIA indicate that sanctions have a larger influence on programs than incentives. Two-thirds of local workforce investment areas have indicated that the possibility of sanctions influenced their programs, whereas only slightly more than half indicated that incentives had an influence.[41] Further, several Job Centers consider student placement outcomes

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[38] Greenstone, Michael, and Adam Looney. "Building America's Job Skills with Effective Workforce Programs: A Training Strategy to Raise Wages and Increase Work Opportunities." Washington, DC: Brookings Institution, 2011. [39] Jacobson, Louis, Robert LaLonde, and Daniel Sullivan. "Policies to reduce

high-tenured displaced workers' earnings losses through retraining." Discussion Paper 2011-11, The Hamilton Project, Brookings Institution, Washington, DC, 2011.

[40] Heinrich, Carolyn J., Peter R. Mueser, Kenneth R. Troske, Kyung-Seong Jeon, Daver C. Kahvecioglu. 2009 (November). "New Estimates of Public Employment and Training Program Net Impacts: A Nonexperimental Evaluation of the Workforce Investment Act Program." Discussion Paper 4569, Institute for the Study of Labor (IZA), Bonn, Germany.

[41] Dunham, Kate, Melissa Mack, Jeff Salzman, and Andrew Wiegand. "Evaluation of the WIA Performance Measurement System: Survey Report." Oakland, CA: SPR Associates, 2005. Available at http://wdr.doleta.gov/research/keyword.cfm?fuseaction=dsp_puListingDetails&pub_id=2408&mp=y&start=41&sort=7.

in staff performance evaluations and pay for vocational instructors.[42] This practice has significantly increased staff interest in successful student placement following program completion.[43]

Researchers expressed concerns over current WIA metrics for workforce development program performance. For example, in issuing high performance bonuses to States in recognition of high performance achievements, the metric negotiation process does not appropriately adjust for variations in economic and demographic characteristics or service mix.[44] Additionally, the distribution of these bonuses does not directly correlate with program performance, with some lower performing States receiving larger bonuses than higher performing States.[45]

It is possible that the proposed rule might result in unintended consequences. For example, the efficacy of incentives may be reduced with poor measures, as compensation or recognition may not be commensurate with effort and subsequent performance, which could dampen employee motivation.[46] Other unintended consequences may include distortion involving behavior intended to insure against the loss of compensation; also, misrepresentation of outcomes may occur.[47]

Researchers have expressed concerns about the current measures used to evaluate performance.[48] High performance incentives may unintentionally impact performance negatively if they encourage programs to focus on receiving the award rather than

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[42] Johnson, Terry, Mark Gritz, Russell Jackson, John Burghardt, Carol Boussy, Jan Leonard, and Carlyn Orians. "National Job Corps Study: Report on the Process Analysis." Princeton, NJ: Mathematica Policy Research, 1999. Available at http://wdr.doleta.gov/research/keyword.cfm?fuseaction=dsp_puListingDetails&pub_id=2213&mp=y&start=201&sort=7.

[43] Ibid.

[44] Heinrich, Carolyn J. 2007. "False or Fitting Recognition? The Use of High Performance Bonuses in Motivating Organizational Achievements." Journal of Policy Analysis and Management 26(2) 281–304.

[45] Ibid.

[46] Ibid.

[47] Ibid.

[48] Ibid.

improving program design, delivery, and outcomes. High performance bonuses, therefore, could represent an inefficient use of resources.[49]

State performance accountability measures. This requirement would include significant data collection for Local Boards to address performance measures for the core programs in their jurisdictions. This data collection would permit the State WDBs to assess performance across each State. Training providers would be required to provide data to Local Boards, which would represent a cost in the form of increased data collection and processing. Employers and employees also would have to provide information to the training providers, which would take time. This provision, in combination with the board membership provision requiring employer/business representation, is expected to improve the quality of local training and, ultimately, the number and caliber of job placements.

Implementation of follow-up measures, rather than termination-based measures, might improve long-term labor market outcomes, although some could divert resources from training activities.[50]

Before-after earning metrics capture the contribution of training to earnings potential and minimize incentives to select only training participants with high initial earnings.[51] The study found that value added net of social cost is one objective that is too difficult to measure on a regular basis. With the exception of programs in a few States, current incentives do not reward

[49] Wandner, Stephen, and Michael Wiseman. "Financial performance incentives for United States government

programs: Lessons learned from the Workforce Investment Act, Temporary Assistance to Needy Families, and food stamps." What the European Social Fund can learn from the WIA experience, Washington, DC Retrieved January 16 (2009): 2011.

[50] Courty, Pascal, and Gerald Marschke. "Making Government Accountable: Lessons from a Federal Job Training Program." Public Administration Review 67.5 (2007): 904–916.

[51] Heckman, James J., Carolyn Heinrich, and Jeffrey A. Smith. 1997. "Assessing the Performance of Performance Standards in Public Bureaucracies." American Economic Review 87(2): 389–95.

enrollment of the least advantaged.[52] In addition, the study noted evidence that the performance-standards can be "gamed" in an attempt to maximize their centers' measured performance.[53]

Pressure to meet performance levels could lead providers to focus on offering services to participants most likely to succeed. For example, current accountability measures might create incentives for training providers to screen participants for motivation, delay participation for those needing significant improvement, or discourage participation by those with high existing wages.[54]

The following subsections present additional channels by which economic benefits may be associated with various aspects of the proposed rule.

Dislocated workers. A study found that for dislocated workers, receiving WIA services significantly increased employment rates by 13.5 percent and boosted post-exit quarterly earnings

by $951.[55] However, another study found that training in the WIA dislocated worker program had a net benefit close to zero or even negative.[56]

Self-employed individuals. Job seekers who received self-employment services started

businesses sooner and had longer lasting businesses than nonparticipants. Self-employment assistance participants were 19 times more likely to be self-employed than nonparticipants and expressed high levels of satisfaction with self-employment. A study of Maine, New Jersey, and

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[52] Ibid.

[53] Ibid.

[54] Dunham, Kate, Melissa Mack, Jeff Salzman, and Andrew Wiegand. "Evaluation of the WIA Performance Measurement System: Survey Report." Oakland, CA: SPR Associates, 2005. Available at http://wdr.doleta.gov/research/keyword.cfm?fuseaction=dsp_puListingDetails&pub_id=2408&mp=y&start=41&sort=7.

[55] Hollenbeck, Kevin, Daniel Schroeder, Christopher T. King, and Wei-Jang Huang. "Net Impact Estimates for Services Provided through the Workforce Investment Act." Washington, DC: U.S. Department of Labor, 2005. Available at http://wdr.doleta.gov/research/FullText_Documents/Net%20Impact%20Estimates%20for%20Services%20Provided%20through%20the%20Workforce%20Investment%20Act - %20Final%20Report.pdf. [56] Heinrich, Carolyn J., Peter R. Mueser, and Kenneth R. Troske. "Workforce Investment Act Non-Experimental

Net Impact Evaluation." Columbia, MD: IMPAQ International, LLC, 2009. Available at http://wdr.doleta.gov/research/keyword.cfm?fuseaction=dsp_puListingDetails&pub_id=2419&mp=y&start=41&sort=7.

New York programs found that participants were four times more likely to obtain employment of any kind than nonparticipants.[57]

Workers with disabilities. A study of individuals with disabilities enrolled in training for a broad array of occupations (including wastewater treatment, auto body repair, meat cutter/wrapper, clerical support staff, surgical tools technician, and veterinary assistant) found that the mean hourly wage and hours worked per quarter for program graduates were higher than for individuals who did not complete the program.

In conclusion, after a review of the quantitative and qualitative analysis of the impacts of this NPRM, the Department has determined that the societal benefits justify the anticipated costs.

B. Paperwork Reduction Act

The purposes of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq., include minimizing the paperwork burden on affected entities. The PRA requires certain actions before an agency can adopt or revise a collection of information, including publishing for public comment a summary of the collection of information and a brief description of the need for and proposed use of the information.

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the PRA. See 44 U.S.C. 3506(c)(2)(A). This activity helps to

ensure that the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources)

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[57] Kosanovich, William, Heather Fleck, Berwood Yost, Wendy Armon, and Sandra Siliezar. "Comprehensive Assessment of Self-Employment Assistance Programs." Arlington, VA: DTI Associates, 2002. Available at http://wdr.doleta.gov/research/keyword.cfm?fuseaction=dsp_puListingDetails&pub_id=2293&mp=y&start=121&sort=7.

is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents. Furthermore, the PRA requires all Federal agencies to analyze proposed regulations for potential time burdens on the regulated community created by provisions in the proposed regulations, which require the submission of information. The information collection requirements must also be submitted to the OMB for approval.

The Department notes that a Federal agency may not conduct or sponsor a collection of information unless it is approved by the OMB under the PRA and displays a currently valid OMB control number. The public is also not required to respond to a collection of information unless it displays a currently valid OMB control number. In addition, notwithstanding any other provisions of law, no person will be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number (44 U.S.C. 3512).

The information collections in this rule are summarized as follows. (Detailed information about the information collections identified in this summary is available in the section-by-section discussion of this NPRM, Section IV.) The table below captures the current and proposed burden hours associated with the information collections.

Current and Proposed Information Collection Burdens

OMB Approved No.	Burden hours currently	Burden hours proposed	Change
1205-0NEW	0	8,550	8,550
1205-3NEW	161,373*	161,373	0
1205-0001	416	416	0
1205-0039	8,521	8,521	0
1205-0219	38,610	38,610	0
1205-0426	11,440	19,153	7,713
1205-0439	1,006	1,066	60
1205-0461	3,392	5,088	1,696
Total	224,758	242,777	18,019

* OMB 1205-3NEW would not increase burden hours because it would consolidate information collections from three currently approved information collections: OMB 1205- 0422, OMB 1205-0425, OMB 1205-0464.

The Department anticipates that the above collections may be phased out or modified, as appropriate, as WIOA requirements are fully implemented.

Agency: DOL-ETA.

Title of Collection: State Training Provider Eligibility Collection.

OMB Control Number: 1205-0NEW.

Description: Under WIOA sec. 122, the Governor, after consultation with the State Board, must establish criteria, information requirements, and procedures regarding the eligibility of providers of training services to receive funds under WIOA for the provision of training services in

local areas in the State. The proposed rule describes the process for adding "new"' providers to the ETPL, explains the detailed application process for previously WIA-eligible providers to remain eligible under WIOA, describes the performance information that providers are required to submit to the State in order to establish or renew eligibility, and explains the

requirements for distributing the ETPL and accompanying information about the programs and providers on the list.

Affected Public: State, local, and tribal governments, and private sector.

Obligation to Respond: Required to obtain or retain a benefit (WIOA sec. 122).

Total Estimated Number of Respondents Annually: 11,400 (11,400 additional

respondents resulting from this rulemaking).

Total Estimated Number of Annual Responses: 11,400 (11,400 additional responses

resulting from this rulemaking).

Total Estimated Annual Time Burden: 8,550 hours (8,550 additional hours resulting from

this rulemaking).

Total Estimated Annual Other Costs Burden: $0 (no change as a result of this rulemaking).

NPRM Sections Containing Information Collections Approved Under this Control Number: § 680.450, § 680.460, § 680.490, § 680.500.

Title of Collection: WIOA Performance Management and Information and Reporting System (YouthBuild, National Farmworkers Jobs Program, Indian and Native Americans Program).

OMB Control Number: 1205-3NEW.

Description: This new information collection will consolidate the existing information collections for YouthBuild, National Farmworkers Jobs Program, Indian and Native Americans Program participants. These information collections are currently approved under OMB Control

Numbers 1205-0422, 1205-0425, and 1205-0464. The WIOA Performance Management and Information and Reporting System would standardize the initial application, quarterly, and annual reporting processes for program participants.

Affected Public: State, local, and tribal governments, and private sector.

Obligation to Respond: Required to obtain or retain benefits (WIOA, sections 166, 167, and 171).

Total Estimated Number of Respondents Annually: 377 (no additional respondents resulting from this rulemaking).

Total Estimated Number of Annual Responses: 29,682 (no additional respondents resulting from this rulemaking).

Total Estimated Annual Time Burden: 161,373 hours (no additional respondents

resulting from this rulemaking).

Total Estimated Annual Other Costs Burden: $0 (no change as a result of this rulemaking).

NPRM Sections Containing Information Collections Approved Under this Control Number: § 684.420, § 684.610, § 684.700, § 684.800, § 685.210, § 685.400, § 688.420, § 688.610.

Title of Collection: Work Application and Job Order Recordkeeping.

OMB Control Number: 1205-0001.

Description: The proposed rule would not affect the burden hours associated with creating work application and job order records. However, the rule would change the record

retention requirements for work applications and job orders from 1 year to 3 years in order to align with other Wagner-Peyser record retention requirements.

Affected Public: State governments.

Obligation to Respond: Required to obtain or retain a benefit (WIOA sec. 121).

Total Estimated Number of Respondents Annually: 52 (no change as a result of this rulemaking).

Total Estimated Number of Annual Responses: 52 (no change as a result of this rulemaking).

Total Estimated Annual Time Burden: 416 hours (no change as a result of this rulemaking).

Total Estimated Annual Other Costs Burden: $0 (no change as a result of this

rulemaking).

NPRM Sections Containing Information Collections Approved Under this Control Number: § 652.8.

Title of Collection: Migrant and Seasonal Farmworker Monitoring Report and One-Stop Career Center Complaint/Referral Record.

OMB Control Number: 1205-0039.

Description: WIOA expands the existing complaint system under 20 CFR part 658 subpart E to require most employment-related law complaints by MSFWs to be recorded, referred, and tracked to resolution. Under existing regulations, employment-related law complaints by MSFWs are not recorded, referred, and tracked to resolution.

Affected Public: State and local governments, and individuals.

Obligation to Respond: Required to obtain or retain a benefit (WIOA sec. 167).

Total Estimated Number of Respondents Annually: 3,586 (no change as a result of this rulemaking).

Total Estimated Number of Annual Responses: 3,786 (no change as a result of this rulemaking).

Total Estimated Annual Time Burden: 8,521 hours (no change as a result of this rulemaking).

Total Estimated Annual Other Costs Burden: $0 (no change as a result of this rulemaking).

NPRM Sections Containing Information Collections Approved Under this Control Number: § 653.107, § 653.108(g)(6), § 653.108(s), § 653.108(i), § 653.108(m), § 653.410, § 658.601, § 658.601(a).

Title of Collection: Standard Job Corps Contractor Gathering Information.

OMB Control Number: 1205-0219.

Description: The proposed rule would retain the same information collection requirements as those currently found at 20 CFR 670.960, but would relocate the requirements to 20 CFR 686.945. Consistent with existing rules, the proposed rule would require the Department to provide guidelines for maintaining records for each student during enrollment and for disposition of records after separation. As a result, the Department does not anticipate any changes in the information collection.

Affected Public: Private sector.

Obligation to Respond: Required to obtain or retain a benefit (WIOA sec. 147).

Total Estimated Number of Respondents Annually: 97 (no change as a result of this rulemaking).

Total Estimated Number of Annual Responses: 184,628 (no change as a result of this rulemaking).

Total Estimated Annual Time Burden: 38,610 hours (no change as a result of this rulemaking).

Total Estimated Annual Other Costs Burden: $0 (no change as a result of this rulemaking).

NPRM Sections Containing Information Collections Approved Under this Control Number: § 686.945.

Title of Collection: Placement Verification and Follow-up of Job Corps Participants.

OMB Control Number: 1205-0426.

Description: Job Corps' performance management system, which includes the OMS, is a well-established measurement system the Job Corps community has been using to track performance of centers and service providers for many years. It will be updated to reflect the new requirements of WIOA, including the new primary indicators of performance, but may also include breakouts of data that will help program managers target interventions in order to achieve the primary indicators. As a result, additional information would be collected from respondents.

Affected Public: Individuals or households and private sector.

Obligation to Respond: Voluntary.

Total Estimated Number of Respondents Annually: 88,060 (34,737 additional respondents resulting from this rulemaking).

Total Estimated Number of Annual Responses: 88,060 (34,737 additional responses resulting from this rulemaking).

Total Estimated Annual Time Burden: 19,153 hours (7,713 additional hours resulting from this rulemaking).

Total Estimated Annual Other Costs Burden: $0 (no change as a result of this rulemaking).

NPRM Sections Containing Information Collections Approved Under this Control Number: § 686.945, § 686.955, § 686.1000, § 686.1010, § 686.1020, § 686.1030, and § 686.1040.

Title of Collection: National Emergency Grant Assistance – Application and Reporting Procedures.

OMB Control Number: 1205-0439.

Description: Specified activities must be conducted before an application for a National Dislocated Worker Grant (NDWG) is submitted. The proposed rule requires that a project implementation plan, which is already required for all NEGs under WIA, be submitted post- NDWG award. However, currently this requirement is included only in guidance; this NPRM proposes to add this requirement to the regulations. The project implementation plan includes more detailed information about project operations than is required for the initial application. This information allows the Department to provide grantees with targeted technical assistance, and to exercise appropriate oversight and monitoring over the NDWG award.

Affected Public: State, local, and tribal governments.

Obligation to Respond: Required to obtain or retain a benefit (WIOA sec. 170).

Total Estimated Number of Respondents Annually: 159 (9 additional respondents resulting from this rulemaking).

Total Estimated Number of Annual Responses: 1,574 (89 additional responses resulting

from this rulemaking).

Total Estimated Annual Time Burden: 1,066 hours (60 additional hours resulting from this rulemaking).

Total Estimated Annual Other Costs Burden: $0 (no change as a result of this rulemaking).

NPRM Sections Containing Information Collections Approved Under this Control Number: § 687.150.

Title of Collection: Employment and Training Administration Financial Report Form 9130.

OMB Control Number: 1205-0461.

Description: Existing rules require grantees to submit quarterly financial reports. The proposed rule reflects OMB's Uniform Guidance, which standardizes the administrative, cost, and audit provisions for all grants and cooperative agreements provided under part 683. The proposed rule would establish consistent and uniform guidance that increases accountability and transparency, promotes fiscal integrity, and reduces duplication in the quarterly financial reports.

Affected Public: State, local, and tribal governments, and private sector.

Obligation to Respond: Required to obtain or retain a benefit (2 CFR 200.327).

Total Estimated Number of Respondents Annually: 848 (no change as a result of this rulemaking).

Total Estimated Number of Annual Responses: 6,784 (no change as a result of this rulemaking).

Total Estimated Annual Time Burden: 5,088 hours (1,696 additional hours as a result of this rulemaking).

Total Estimated Annual Other Costs Burden: $0 (no change as a result of this rulemaking).

NPRM Sections Containing Information Collections Approved Under this Control Number: § 681.430, § 683.150, § 683.200, § 683.300, § 683.730, § 683.740, § 683.750.

Interested parties may obtain a copy free of charge of one or more of the information collection requests submitted to the OMB on the reginfo.gov Web site at http://www.reginfo.gov/public/do/PRAMain. From the Information Collection Review tab, select Information Collection Review. Then select Department of Labor from the Currently Under Review dropdown menu, and look up the Control Number. A free copy of the requests may also be obtained by contacting the person named in the ADDRESSES section of this preamble.

As noted in the ADDRESSES section of this NPRM, interested parties may send comments

about the information collections to the Department throughout the 60-day comment period and/or to the OMB within 30 days of publication of this notice in the Federal Register. In

order to help ensure appropriate consideration, comments should mention the applicable OMB Control Number(s). The Department and OMB are particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The Department notes that in order to meet WIOA requirements, several information collections mentioned in this NPRM need to be in place prior to the final rule taking effect. The Department will follow PRA requirements in clearing the collections (emergency procedures, as appropriate), including providing appropriate public engagement and taking into account the comments received as part of this rulemaking.

C. Executive Order 13132: Federalism

E.O. 13132 requires Federal agencies to ensure that the principles of Federalism established by the Framers of our Constitution guide the executive departments and agencies in the formulation and implementation of policies and to further the policies of the Unfunded Mandates Reform Act. Further, agencies shall strictly adhere to constitutional principles. Agencies shall closely examine the constitutional and statutory authority supporting any action that would limit the policy-making discretion of the States and they shall carefully assess the

necessity for any such action. To the extent practicable, State and local officials shall be

consulted before any such action is implemented. Section 3(b) of the Executive Order further provides that Federal agencies must implement regulations that have a substantial direct effect only if statutory authority permits the regulation and it is of national significance. The Department has reviewed the WIOA NPRM in light of these requirements and have determined that, with the enactment of WIOA and its clear requirement to publish national implementing regulations, that E.O. sec. 3(b) has been fully reviewed and its requirement satisfied.

Accordingly, the Department has reviewed this WIOA-required NPRM and has determined that the proposed rulemaking has no Federalism implications. The proposed rule, as noted above, has no substantial direct effects on States, on the relationships between the States, or on the distribution of power and responsibilities among the various levels of Government as described by E.O. 13132. Therefore, the Department has determined that this proposed rule does not have a sufficient Federalism implication to warrant the preparation of a summary impact statement.

D. Unfunded Mandates Reform Act of 1995

This Act directs agencies to assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector. A Federal mandate is any provision in a regulation that imposes an enforceable duty upon State, local, or tribal governments, or imposes a duty on the private sector that is not voluntary.

The WIOA contains specific language supporting employment and training activities for Indian, Alaska Natives, and Native Hawaiian individuals. These program requirements are supported, as is the WIOA workforce development system generally, by Federal formula grant funds and accordingly are not considered unfunded mandates. Similarly, migrant and seasonal farmworker activities are authorized and funded under the WIOA program as is currently done under the WIA program. The States are mandated to perform certain activities for the Federal Government under the WIOA program and will be reimbursed (grant funding) for the resources required to perform those responsibilities. The same process and grant relationship exists between States and Local WDBs under the WIA program and shall continue under the WIOA program and as identified in this NPRM.

WIOA contains language establishing procedures regarding the eligibility of training providers to receive funds under the WIOA program. It also contains clear State information collection requirements for training entities, for example, submission of appropriate, accurate, and timely information. A decision by a private training entity to participate as a provider under the WIOA program is purely voluntary and therefore information collection burdens do not impose a duty on the private sector that is not voluntarily assumed.

The Department's following consideration of these factors has determined that this proposed rule contains no unfunded Federal mandates, which are defined in 2 U.S.C. 658(6) to include either a "Federal intergovernmental mandate" or a "Federal private sector mandate."

E. Plain Language

The Department drafted this WIOA NPRM in plain language.

F. Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681) requires the assessment of the impact of this proposed rule on family well-being. A rule that is determined to have a negative effect on families must be supported with an adequate rationale. The Department has assessed this proposed rule in light of this requirement and determined that the WIOA NPRM would not have a negative effect on families.

G. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 603, requires agencies to prepare a regulatory flexibility analysis to determine whether a regulation will have a significant economic impact on a substantial number of small entities. Section 605 of the RFA allows an agency to certify a rule in lieu of preparing an analysis if the regulation is not expected to have a significant economic impact on a substantial number of small entities. Further, under the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C 801 (SBREFA), an agency is required to produce compliance guidance for small entities if the rule has a significant economic impact.

The Small Business Administration (SBA) defines a small business as one that is "independently owned and operated and which is not dominant in its field of operation." The definition of small business varies from industry to industry to the extent necessary to reflect industry size differences properly. An agency must either use the SBA definition for a small entity or establish an alternative definition, in this instance, for the workforce industry. The Department has adopted the SBA definition for the purposes of this certification.

The Department has notified the Chief Counsel for Advocacy, SBA, under the RFA at 5

U.S.C. 605(b), and proposes to certify that this rule will not have a significant economic impact on a substantial number of small entities. This finding is supported, in large measure, by the fact that small entities are already receiving financial assistance under the WIA program and will likely continue to do so under the WIOA program as articulated in this NPRM.

Affected small entities

The proposed rule can be expected to impact small one-stop center operators. One-stop

operators can be a single entity (public, private, or nonprofit) or a consortium of entities. The types of entities that might be a one-stop operator include: (1) an institution of higher education;

(2) an employment service State agency established under the Wagner-Peyser Act; (3) a community-based organization, nonprofit organization, or workforce intermediary; (4) a private for-profit entity; (5) a government agency; (6) a Local Board, with the approval of the local CEO and the Governor; or (7) another interested organization or entity that can carry out the duties of the one-stop operator. Examples include a local chamber of commerce or other business organization, or a labor

organization.

Impact on small entities

The Department indicates that transfer payments are a significant aspect of this analysis in that the majority of WIOA program cost burdens on State and Local WDBs will be fully financed through Federal transfer payments to States. We have highlighted costs that are new to WIOA implementation and this NPRM. Therefore, the Department expects that the WIOA NPRM will have no cost impact on small entities.

H. Small Business Regulatory Enforcement Fairness Act of 1996

The Department has determined that this proposed rulemaking does not impose a significant impact on a substantial number of small entities under the RFA; therefore, the Department is not required to produce any Compliance Guides for Small Entities as mandated by the SBREFA.

I. Executive Order 13175 (Indian Tribal Governments)

The Department reviewed this proposed rule under the terms of E.O. 13175 and has determined it to have no tribal implications in addition to those created through the reimbursement of WIA and future WIOA program expenses via Federally disbursed formula grant funds. The proposed rule would have substantial direct effects on one or more Indian

Tribes, on the relationship between the Federal Government and Indian Tribes, or on the

distribution of power and responsibilities between the Federal Government and Indian Tribes. As a

result, a tribal summary impact statement has been prepared.

Prior to developing this proposed rule, the Department held three events to talk with the tribal institutions about their concerns about the current state of Indian and Native American Programs (INAP) as well as what concerns they see in the future. These three events consisted of a consultation webinar and two in-person town hall meetings. The consultation webinar, entitled "Listening session on Indian and Native American Programs," occurred on September 15, 2014. Two other consultations were held, including an October 21, 2014, town hall meeting with Indian and Native American leaders and membership organizations serving Indians and Native Americans, Hawaiians, and Alaskan Natives, and a formal consultation December 17, 2014, with members of the Native American Employment and Training Advisory Council to the Secretary of Labor.

The Department received feedback from the Indian and Native American (INA) community and the general public that established several areas of interest concerning the Department of Labor's relationship with Indian and Native American Tribes and Tribal Governments. These areas of interest are summarized below.

Services received in American Job Centers:

Specifically, the INA community expressed interest in learning how American Job Centers will account for the use of their INA funding dollars and how to ensure that the funds intended for the INA population will be dedicated to that population. In addition, there were also several individuals that had concerns that INA individuals that enter an American Job Center may not get the general assistance that is intended for all people that seek assistance. In other

words, several commenters wanted to ensure that INA individuals should receive assistance

intended for other populations that they may qualify for when seeking service. Finally, several commenters were interested in learning more about how INA programs may be required to contribute to American Job Center infrastructure funding and how American Job Centers will account for INA members served to ensure that the American Job Center network is responding to the relevant INA population needs.

Funding per participant was low for INA programs especially when compared to other job

training programs:

Many of the commenters expressed concern that the funds made available on a per participant basis for INA programs were not sufficient to meet the needs of the populations being served. Specifically, many commenters stated that funds available for INA youth are inadequate to fully meet their needs. In addition, commenters felt that more funds were needed for INA job training programs to ensure that career pathway training could be carried out. Several commenters compared the cost per participant funding for other programs, such as Job Corps, as evidence of the lack of funding for INA programs. The commenters went on to request a comparison of other WIA-funded programs and the INA programs. Finally, one commenter felt that because of the lack of funds, INA youth were being served instead of INA adults.

The majority of comments focused on the use of new funding streams and the requirements attached to those funds. Commenters expressed concern about the issue of using and transferring WIOA funding to support activities under Indian Employment, Training, and Related Services Demonstration Act of 1992, as amended (Pub. L. 102-477). Specifically, commenters talked about the importance of flexibility in adherence to the requirements because Pub. L. 102-477 programs

are tribal programs, may be located in rural areas, and have been

effectively and efficiently reporting through existing processes, including a single reporting

feature in the annual report. Additionally, commenters suggested that vocational rehabilitation, adult education reentry, and other applicable job/education-related program funding also should be allowed to support Pub. L. 102-477 programs. Clarity around which funding streams are allowable also was suggested. Commenters also expressed hope that the Department of Education will integrate Carl D. Perkins funding under Pub. L. 102-477 which allows Federally- recognized Tribes and Alaska Native entities to combine formula-funded Federal grant funds administered by the Department of Interior, which are employment and training-related into a single plan with a single budget and a single reporting system. Commenters noted that the Native American Career and Technical Education Program (NACTEP) is a required partner, and that NACTEP has limited the partner funds available to fund supportive services and work experiences. One commenter asked if statutory language regarding key investments in vulnerable populations would result in an increase in funding for Division of Indian and Native American Programs (DINAP) programs. Lastly, it was suggested that the 166 Advisory Council continue, and DINAP programs continue to be staffed with Native Americans and Native American Chiefs.

Concerns about the effects of the new performance reporting requirements established in WIOA

on the INA community:

Many commenters expressed concern that INA programs would not be able to meet the performance reporting requirements established by WIOA for several reasons, including limited

funds to train individuals for the new performance standards and the need to purchase new technology and equipment to meet the reporting requirements. In addition, several commenters said that INA programs will have to be more selective in determining eligibility for training programs because of insufficient of funding and the increased focus on performance outcomes.

Lack of funding to hire and effectively train staff and ensuring policy is responsive to INA community needs:

Commenters stated concerns that INA programs will not be able to achieve expected performance levels because they lacked funding to adequately staff programs. Several commenters stated concerns about the limited number of staff, increased training needs for staff, and the need to ensure that technical assistance is made available to staff. Specifically, commenters are concerned that INA programs may transition slower than States to the new WIOA requirements because of funding and staff needs. In addition, they stated that INA programs need more funds to implement new administrative tasks as well as provide services to the INA community.

Working with States and other programs:

Commenters expressed concerns about States' accountability to the INA community and how to make other training programs administered by the State work comprehensively with INA programs. Others encouraged flexibility and freedom in funding in working with these same entities and lauded this flexibility as a way to get more out of funds. Furthermore, the commenters emphasized how important it is for Indian and Native American Leaders to have a voice in the policy

and guidance formulation process so that policy is directly responsive to the needs and funding has to go hand in hand with the needs identified. Some commenters suggested an on-going dialogue between Indian and Native American leaders, Workforce Investment Boards, local and State agencies, and the American Job Centers to discuss training and education that leads to jobs. Some commenters stated that State-run programs need to be more accountable for how they interact with INA populations. Other commenters expressed

frustration that some State programs do not see a need to work with INA programs because the

States think that the INA programs get money from other sources, such as casinos. Many of the commenters said that they wanted better collaboration with State-run programs and increased networking among INA programs and State agencies. Finally, one commenter stated that collaboration between INA programs and the State-run training systems would make services to individuals more efficient because it would prevent "double-dipping" in programs.

The Department invites public comment about what can be done to address the areas summarized above.

J. Executive Order 12630 (Government Actions and Interference with Constitutionally

Protected Property Rights

The Department has determined that this WIOA NPRM is not subject to E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

K. Executive Order 12988 (Civil Justice Reform)

This NPRM was drafted and reviewed in accordance with E.O. 12988, Civil Justice Reform, and the Department has determined that the proposed rule will not burden the Federal court system. The proposed WIOA regulation was written to minimize litigation and to the extent feasible, provides a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

L. Executive Order 13211 (Energy Supply)

This NPRM was drafted and reviewed in accordance with E.O. 13211, Energy Supply.

The Department has determined the NPRM will not have a significant adverse effect on the supply, distribution, or use of energy and is not subject to E.O. 13211.

List of Subjects

20 CFR Part 603

Grant programs-labor, Privacy, Reporting and recordkeeping requirements, Unemployment compensation, Wages.

20 CFR Part 651

Employment, Grant programs-labor.

20 CFR Part 652

Employment, Grant programs-labor, Reporting and recordkeeping requirements. 20 CFR Part 653

Agriculture, Employment, Equal employment opportunity, Grant programs-labor, Migrant labor, Reporting and recordkeeping requirements.

20 CFR Part 654

Employment, Government procurement, Housing standards, Manpower, Migrant labor, Reporting and recordkeeping requirements.

20 CFR Part 658

Administrative practice and procedure, Employment, Grant programs-labor, Reporting and recordkeeping requirements.

20 CFR Part 675

Employment, Grant programs-labor.

20 CFR Parts 679-680

Employment, Grant programs-labor.

20 CFR Part 681

Employment, Grant programs-labor, Youth.

20 CFR Part 682

Employment, Grant programs-labor.

20 CFR Part 683

Employment, Grant programs-labor, Reporting and recordkeeping requirements. 20

CFR Part 684

Employment, Grant programs-labor, Indians, Reporting and recordkeeping requirements. 20

CFR Part 685

Employment, Grant programs-labor, Migrant labor, Reporting and recordkeeping requirements. 20

CFR Part 686

Employment, Grant programs-labor, Job Corps. 20

CFR Part 687

Employment, Grant programs-labor.

20 CFR Part 688

Employment, Grant programs-labor, Youth, YouthBuild.

For the reasons stated in the preamble, ETA proposes to amend title 20 CFR, chapter V, as

follows:

PART 603 – FEDERAL-STATE UNEMPLOYMENT COMPENSATION (UC) PROGRAM; CONFIDENTIALITY AND DISCLOSURE OF STATE UC INFORMATION

1. Revise the authority citation for part 603 to read as follows:

Authority: Secs. 116, 189, 503, Pub. L. 113-128, 128 Stat. 1425 (Jul. 22, 2014); 20 U.S.C 1232g.

2. Amend § 603.2 by revising paragraph (d) to read as follows:

§ 603.2 What definitions apply to this part?

* * * * *

(d) Public official means:

(1) An official, agency, or public entity within the executive branch of Federal, State, or local government who (or which) has responsibility for administering or enforcing a law, or an

elected official in the Federal, State, or local government.

(2) Public post-secondary educational institutions established and governed under the laws of the State. These include the following:

(i) Institutions that are part of the State's executive branch. This means the head of the institution must derive his or her authority from the Governor, either directly or through a State Board, commission, or similar entity established in the executive branch under the laws of the State.

(ii) Institutions which are independent of the executive branch. This means the head of the institution derives his or her authority from the State's chief executive officer for the State education authority or agency when such officer is elected or appointed independently of the Governor.

(iii) Publicly governed, publicly funded community and technical colleges.

(3) Performance accountability and customer information agencies designated by the Governor of a State to be responsible for coordinating the assessment of State and local education or workforce training program performance and/or evaluating education or workforce training provider performance.

(4) The chief elected official of a local Workforce Development Area as defined in

WIOA sec. 3(9).

(5) A State educational authority, agency or institution as those terms are used in the Family Educational Rights and Privacy Act, to the extent they are public entities.

* * * * *

3. Amend § 603.5 by revising paragraph (e) to read as follows:

§ 603.5 What are the exceptions to the confidentiality requirement?

* * * * *

(e) Public official. Disclosure of confidential UC information to a public official for use in the performance of his or her official duties is permissible.

(1) "Performance of official duties" means administration or enforcement of law or the execution of the official responsibilities of a Federal, State, or local elected official. Administration of law includes research related to the law administered by the public official. Execution of official responsibilities does not include solicitation of contributions or expenditures to or on behalf of a candidate for public or political office or a political party.

(2) For purposes of § 603.2(d)(2) through (5), "performance of official duties" includes, in addition to the activities set out in paragraph (e)(1) of this section, use of the confidential UC information for the following limited purposes:

(i) State and local performance accountability under WIOA sec. 116, including eligible training provider performance accountability under WIOA secs. 116(d) and 122;

(ii) The requirements of discretionary Federal grants awarded under WIOA; or

(iii) As otherwise required for education or workforce training program performance accountability and reporting under Federal or State law.

* * * * *

4. Amend § 603.6 by adding paragraph (b)(8) to read as follows:

§ 603.6 What disclosures are required by this subpart?

* * * * *

(b) * * *

(8) To comply with WIOA sec. 116(e)(4), States must, to the extent practicable, cooperate in the conduct of evaluations (including related research projects) provided for by the Secretary of Labor or the Secretary of Education under the provisions of Federal law identified in WIOA sec. 116(e)(1); WIOA secs. 169 and 242(c)(2)(D); sec. 12(a)(5), 14, and 107 of the Rehabilitation Act of 1973 (29 U.S.C. 709(a)(5), 711, 727) (applied with respect to programs carried out under title I of that Act (29 U.S.C. 720 et seq.)); and the investigations provided for by the Secretary of Labor under sec. 10(b) of the Wagner-Peyser Act (29 U.S.C. 49i(b)). For purposes of this part, States must disclose confidential UC information to a Federal official (or an agent or contractor of a Federal official) requesting such information in the course of such evaluations. This disclosure must be done in accordance with appropriate privacy and confidentiality protections established in this part. This disclosure must be made to the "extent practicable", which means that the disclosure would not interfere with the efficient administration of the State UC law, as required by § 603.5.

* * * * *

5. Add part 675 to read as follows:

PART 675 – INTRODUCTION TO THE REGULATIONS FOR THE WORKFORCE INNOVATION AND OPPORTUNITY SYSTEMS UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

Sec.

675.100 What are the purposes of title I of the Workforce Innovation and Opportunity Act?

675.200 What do the regulations for workforce investment systems under title I of the Workforce Innovation and Opportunity Act cover?

675.300 What definitions apply to these regulations?

Authority: Secs. 2, 3, 189, 503, Pub. L. 113-128, 128 Stat. 1425 (Jul. 22, 2014).

§ 675.100 What are the purposes of title I of the Workforce Innovation and Opportunity

Act?

The purposes of title I of the Workforce Innovation and Opportunity Act (WIOA) include:

(a) Increasing access to, and opportunities for individuals to receive, the employment, education, training, and support services necessary to succeed in the labor market, with a particular focus on those individuals with disabilities or other barriers to employment including out of school youth with the goal of improving their outcomes;

(b) Enhancing the strategic role for States and elected officials, and Local Workforce Development Boards in the workforce system by increasing flexibility to tailor services to meet employer and worker needs at State, regional, and local levels;

(c)) Streamlining service delivery across multiple programs by requiring colocation, coordination, and integration of activities and information to make the system understandable and accessible for individuals, including people with disabilities and those with other barriers to employment, and businesses.

(d) Supporting the alignment of the workforce investment, education, and economic development systems in support of a comprehensive, accessible, and high-quality workforce development system at the Federal, State, and local and regional levels;

(e) Improving the quality and labor market relevance of workforce investment, education, and economic development efforts by promoting the use of industry and sector partnerships, career pathways, and regional service delivery strategies in order to both provide America's workers with the skills and credentials that will enable them to secure and advance in employment with family-sustaining wages, and to provide America's employers with the skilled workers the employers need to succeed in a global economy;

(f)) Promoting accountability using core indicators of performance measured across all WIOA authorized programs, sanctions, and high quality evaluations to improve the structure and

delivery of services through the workforce development system to address and improve the employment and skill needs of workers, jobseekers, and employers;

(g) Increasing the prosperity and economic growth of workers, employers, communities, regions, and States; and

(h) Providing workforce development activities through statewide and local workforce development systems to increase employment, retention and earnings of participants and to increase industry-recognized post-secondary credential attainment to improve the quality of the workforce, reduce welfare dependency, increase economic self-sufficiency, meet skill requirements of employers, and enhance productivity and competitiveness of the nation.

§ 675.200 What do the regulations for workforce investment systems under title I of the

Workforce Innovation and Opportunity Act cover?

The regulations found in 20 CFR parts 675 through 687 set forth the regulatory requirements that are applicable to programs operated with funds provided under title I of WIOA. This part 675 describes the purpose of that Act, explains the format of these regulations

and sets forth definitions for terms that apply to each part. Part 676 contains regulations relating

to statewide and local governance of the workforce investment system. Part 677 describes the one-stop system and the roles of one-stop partners. Part 678 sets forth requirements applicable to WIOA title I programs serving adults and dislocated workers. Part 679 sets forth requirements applicable to

WIOA title I programs serving youth. Part 680 contains regulations relating to statewide activities. Part 681 describes the WIOA performance accountability system. Part 682 sets forth the administrative requirements applicable to programs funded under WIOA title I. Parts 684 and 685 contain the particular requirements applicable to programs serving Indians and Native Americans and Migrant and Seasonal Farmworkers, respectively. Parts 686 and 687 describe the particular requirements applicable to the Job Corps and the national dislocated worker grant programs, respectively. Part 687 contains the regulations governing the YouthBuild program. In addition, part 652 describes the establishment and functioning of State Employment Services under the Wagner-Peyser Act, and 29 CFR part 37 contains the Department's nondiscrimination regulations implementing WIA sec. 188.

§ 675.300 What definitions apply to these regulations?

In addition to the definitions set forth in WIOA and the WIOA Regulations the following definitions apply to the regulations in 20 CFR parts 675 through 687:

Consultation means an interactive discussion between two or more parties for the purpose of exchanging viewpoints and ideas.

Contract means a legal instrument by which a non-Federal entity purchases property or services needed to carry out the project or program under a Federal award. The term as used in this

part does not include a legal instrument, even if the non-Federal entity considers it a contract, when the substance of the transaction meets the definition of a Federal award or

subaward as defined in this section.

Contractor means an entity that receives a contract as defined in this section.

Cooperative Agreement means a legal instrument of financial assistance between a

Federal awarding agency or pass-through entity and a non-Federal entity that, consistent with 31

U.S.C. 6302–6305:

(1) Is used to enter into a relationship the principal purpose of which is to transfer anything of value from the Federal awarding agency or pass- through entity to the non-Federal entity to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal government or pass-through entity's direct benefit or use;

(2) Is distinguished from a grant in that it provides for substantial involvement between the Federal awarding agency or pass-through entity and the non-Federal entity in carrying out the activity contemplated by the Federal award.

(3) The term does not include:

(i) A cooperative research and development agreement as defined in 15 U.S.C. 3710a; or

(ii) An agreement that provides only:

(A) Direct United States Government cash assistance to an individual;

(B) A subsidy;

(C) A loan;

(D)) A loan guarantee; or

(E) Insurance.

Department or DOL means the U.S. Department of Labor, including its agencies and organizational units.

Employment and training activity means a workforce investment activity that is carried out for an adult or dislocated worker under 20 CFR part 678.

Equal opportunity data or EO data means data on race and ethnicity, age, sex, and disability required by 29 CFR part 37 of the DOL regulations implementing sec. 188 of WIA, governing nondiscrimination.

Employment and Training Administration or ETA means the Employment and Training Administration of the U.S. Department of Labor, or its successor organization.

Federal Award means:

(1) The Federal financial assistance that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in 2 CFR 200.101 Applicability;

(2) The cost-reimbursement contract under the Federal Acquisition Regulations that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in 2 CFR 200.101 Applicability; and

(3) The instrument setting forth the terms and conditions. The instrument is the grant agreement, cooperative agreement, other agreement for assistance covered in paragraph (b) of 2 CFR 200.40 Federal financial assistance, or the cost-reimbursement contract awarded under the Federal Acquisition Regulations.

(4) Federal award does not include other contracts that a Federal agency uses to buy goods or services from a contractor or a contract to operate Federal government owned, contractor operated facilities (GOCOs).

Federal Financial Assistance means

(1) For grants and cooperative agreements, assistance in the form of:

(i) Grants;

(ii) Cooperative agreements;

(iii) Non-cash contributions or donations of property (including donated surplus property);

(iv) Direct appropriations;

(v) Food commodities; and

(vi) Other financial assistance, except assistance listed in paragraph (2) of this definition.

(2) For purposes of the audit requirements at 2 CFR part 200, subpart F, Federal financial assistance includes assistance that non-Federal entities receive or administer in the form of:

(i) Loans;

(ii) Loan Guarantees;

(iii) Interest subsidies; and

(iv) Insurance.

(3) Federal financial assistance does not include amounts received as reimbursement for services rendered to individuals as described in 2 CFR 200.502, which outlines the basis for determining Federal awards expended.

Grant or Grant Agreement means a legal instrument of financial assistance between a Federal awarding agency and a non-Federal entity that, consistent with 31 U.S.C. 6302, 6304:

(1) Is used to enter into a relationship the principal purpose of which is to transfer anything of value from the Federal awarding agency to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the

Federal awarding agency's direct benefit or use;

(2) Is distinguished from a cooperative agreement in that it does not provide for substantial involvement between the Federal awarding agency or pass- through entity and the non-Federal entity in carrying out the activity contemplated by the Federal award.

(3) Grant agreement does not include an agreement that provides only:

(i) Direct United States Government cash assistance to an individual;

(ii) A subsidy;

(iii) A loan;

(iv) A loan guarantee; or

(v) Insurance.

Grantee means the direct recipient of grant funds from the Department of Labor under a grant or grant agreement. A grantee may also be referred to as a recipient.

Individual with a disability means an individual with any disability (as defined in sec. 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102)). For purposes of WIOA sec. 188, this term is defined at 29 CFR 37.4.

Labor Federation means an alliance of two or more organized labor unions for the purpose of mutual support and action.

Literacy means an individual's ability to read, write, and speak in English, and to compute, and solve problems, at levels of proficiency necessary to function on the job, in the family of the individual, and in society.

Local Board means a Local Workforce Development Board established under WIOA sec. 107, to set policy for the local workforce investment system.

Non-Federal entity, as defined in 2 CFR part 2900.2, means a State, local government, Indian tribe, institution of higher education (IHE), for-profit entity, foreign public entity, foreign organization or nonprofit organization that carries out a Federal award as a recipient or subrecipient.

Obligations when used in connection with a non-Federal entity's utilization of funds under a Federal award, means orders placed for property and services, contracts and subawards made, and similar transactions during a given period that require payment by the non- Federal entity during the same or a future period.

Outlying area means:

(1) The United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands; and

(2) The Republic of Palau, except during a period that the Secretaries determine both that a Compact of Free Association is in effect and that the Compact contains provisions for training and education assistance prohibiting the assistance provided under the Workforce Innovation and Opportunity Act.

Pass-through entity means a non-Federal entity that provides a subaward to a subrecipient

to carry out part of a Federal program.

Recipient means a non-Federal entity that receives a Federal award directly from a

Federal awarding agency to carry out an activity under a Federal program. The term recipient does not include subrecipients.

Register means the process for collecting information, including identifying information,

to determine an individual's eligibility for services under WIOA title I. Individuals may be registered in a variety ways, as described in 20 CFR parts 678.105.

Secretary means the Secretary of the U.S. Department of Labor, or their designee.

Secretaries means the Secretaries of the U.S. Department Labor and the U.S. Department

of Education, or their designees.

Self-certification means an individual's signed attestation that the information they

submit to demonstrate eligibility for a program under title I of WIOA is true and accurate.

State means each of the several States of the United States, the District of Columbia and the Commonwealth of Puerto Rico. The term "State" does not include outlying areas.

State Board means a State Workforce Development Board established under WIOA sec. 101.

Subgrant or subaward means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass- through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

Subrecipient means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program, but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

Unliquidated obligations means, for financial reports prepared on a cash basis,

obligations incurred by the non-Federal entity that have not been paid (liquidated). For reports prepared on an accrual expenditure basis, these are obligations incurred by the non-Federal entity for which an expenditure has not been recorded.

Unobligated balance means the amount of funds under a Federal award that the non-Federal entity has not obligated. The amount is computed by subtracting the cumulative amount of the non-Federal entity's unliquidated obligations and expenditures of funds under the Federal award from the cumulative amount of the funds that the Federal awarding agency or pass- through entity authorized the non- Federal entity to obligate.

Wagner-Peyser Act means the Act of June 6, 1933, as amended, codified at 29 U.S.C. 49 et seq.

WIA Regulations mean the regulations in 20 CFR parts 660 through 672, the Wagner-Peyser Act regulations in 20 CFR part 652, subpart C, and the regulations implementing WIA sec. 188 in 29 CFR part 37.

WIOA regulations mean the regulations in 20 CFR parts 675 through 687, the Wagner-

Peyser Act regulations in 20 CFR part 652, subpart C, and the regulations implementing WIA sec. 188 in 29 CFR part 37.

Workforce investment activities mean the array of activities permitted under title I of WIOA, which include employment and training activities for adults and dislocated workers, as described in WIOA sec. 134, and youth activities, as described in WIOA sec. 129.

Youth Workforce Investment Activity means a workforce investment activity that is carried out for eligible youth under 20 CFR part 679.

6. Add part 679 to read as follows:

PART 679 – STATEWIDE AND LOCAL GOVERNANCE OF THE WORKFORCE INVESTMENT SYSTEM UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

Subpart A—State Workforce Development Board

Sec.

679.100 What is the vision and purpose of the State Board?

679.110 What is the State Workforce Development Board?

679.120 What is meant by the terms “optimum policy-making authority” and “demonstrated experience and expertise”?

679.130 What are the functions of the State Board?

679.140 How does the State Board meet its requirement to conduct business in an open manner under “sunshine provision” of the Workforce Innovation and Opportunity Act?

679.150 Under what circumstances may the Governor select an alternative entity in place of the State Workforce Development Board?

679.160 Under what circumstances may the State Board hire staff?

Subpart B—Workforce Innovation and Opportunity Act Local Governance (Workforce Development Areas)

Sec.

679.200 What is the purpose of requiring States to identify regions?

679.210 What are the requirements for identifying a region?

679.220 What is the purpose of the local workforce development area?

679.230 What are the general procedural requirements for designation of local workforce development areas?

679.240 What are the substantive requirements for designation of local workforce development areas that were not designated as local areas under the Workforce Investment Act of 1998?

679.250 What are the requirements for initial and subsequent designation of workforce development areas that had been designated as local areas under the Workforce Investment Act of 1998?

679.260 What do the terms “performed successfully” and “sustained fiscal integrity” mean for purposes of designating local areas?

679.270 What are the special designation provisions for single-area States?

679.280 How does the State fulfill the requirement to provide assistance to local areas within a planning region that wish to redesignate into a single local area?

679.290 What right does an entity have to appeal the Governor’s decision rejecting a request for designation as a workforce development area?

Subpart C—Local Boards

Sec.

679.300 What is the vision and purpose of the Local Workforce Development Board?

679.310 What is the Local Workforce Development Board?

679.320 Who are the required members of the Local Workforce Development Board?

679.330 Who must chair a Local Board?

679.340 What is meant by the terms “optimum policy-making authority” and “demonstrated experience and expertise”?

679.350 What criteria will be used to establish the membership of the Local Board?

679.360 What is a standing committee, and what is its relationship to the Local Board?

679.370 What are the functions of the Local Board?

679.380 How does the Local Board satisfy the consumer choice requirements for career services and training services?

679.390 How does the Local Board meet its requirement to conduct business in an open manner under the “sunshine provision” of the Workforce Innovation and Opportunity Act?

679.400 Who are the staff to the Local Board and what is their role?

679.410 Under what conditions may a Local Board directly be a provider of career services, or training services, or act as a one-stop operator?

679.420 What are the functions of the local fiscal agent?

679.430 How do entities performing multiple functions in a local area demonstrate internal controls and prevent conflict of interest?

Subpart D—Regional and Local Plan

Sec.

679.500 What is the purpose of the regional and local plan?

679.510 What are the requirements for regional planning?

679.520 What are the requirements for approval of a regional plan?

679.530 When must the regional plan be modified?

679.540 How are local planning requirements reflected in a regional plan?

679.550 What are the requirements for the development of the local plan?

679.560 What are the contents of the local plan?

679.570 What are the requirements for approval of a local plan?

679.580 When must the local plan be modified?

Subpart E—Waivers/WorkFlex (Workforce Flexibility Plan)

Sec.

679.600 What is the purpose of the General Statutory and Regulatory Waiver Authority in the Workforce Innovation and Opportunity Act?

679.610 What provisions of the Workforce Innovation and Opportunity Act and the Wagner-Peyser Act may be waived, and what provisions may not be waived?

679.620 Under what conditions may a Governor request, and the Secretary approve, a general waiver of statutory or regulatory requirements under the Workforce Innovation and Opportunity Act?

679.630 Under what conditions may the Governor submit a Workforce Flexibility Plan?

679.640 What limitations apply to the State's Workforce Flexibility Plan authority under the Workforce Innovation and Opportunity Act?

2014).

Authority: Secs. 101, 106, 107, 108, 189, 503, Pub. L. 113-128, 128 Stat. 1425 (Jul. 22,

Subpart A—State Workforce Development Board

§ 679.100 What the purpose of the State Board?

The purpose of the State Board is to convene State, regional, and local workforce system and partners, to –

(a) Enhance the capacity and performance of the workforce development system;

(b) Align and improve the outcomes and effectiveness of Federally-funded and other workforce programs and investments; and

(c) Through these efforts, promote economic growth.

(d) Engage workforce system representatives, including businesses, education providers, economic development, labor representatives, and other stakeholders to help the workforce development system achieve the purpose of the Workforce Innovation and Opportunity Act (WIOA); and

(e) Assist to achieve the State's strategic and operational vision and goals as outlined in the State Plan.

§ 679.110 What is the State Workforce Development Board?

(a) The State Board is a board established by the Governor in accordance with the requirements of WIOA sec. 101 and this section.

(b) The membership of the State Board must meet the requirements of WIOA 101(b) and must represent diverse geographic areas of the State, including urban, rural, and suburban areas. The Board membership and must include:

(1) The Governor;

(2) A member of each chamber of the State legislature, appointed by the appropriate presiding officers of such chamber, as appropriate under State law; and

(3) Members appointed by the Governor, which must include:

(i) A majority of representatives of businesses or organizations who:

(A) Are the owner or chief executive officer for the business or organization, or is an executive with the business or organization with optimum policy-making or hiring authority, and may also be members of a Local Board as described in WIOA sec. 107(b)(2)(A)(i);

(B)) Represent businesses, or organizations that represent businesses described in 679.110(b)(3)(i), that, at a minimum, provide employment and training opportunities that include high-quality, work-relevant training and development in in-demand industry sectors or occupations in

the State; and

(C) Are appointed from a list of potential members nominated by State business organizations and business trade associations; and

(D) At a minimum, one member representing small businesses as defined by the U.S. Small Business Administration.

(ii) Not less than 20 percent who are representatives of the workforce within the State,

which:

(A)) Must include two or more representatives of labor organizations nominated by State labor federations;

(B)) Must include one representative who must be a member of a labor organization or training director from a joint labor-management apprenticeship program, or, if no such joint program exists in the State, a member of a labor organization or training director who is a representative of an apprenticeship program;

(C) May include one or more representatives of community-based organizations that have demonstrated experience and expertise in addressing the employment, training, or education needs of individuals with barriers to employment, including organizations that serve

veterans or provide or support competitive, integrated employment for individuals with disabilities; and

(D)) May include one or more representatives of organizations that have demonstrated experience and expertise in addressing the employment, training, or education needs of eligible youth, including representatives of organizations that serve out-of-school youth.

(iii) The balance of the members:

(A)) Must include representatives of the Government including:

(1) The lead State officials with primary responsibility for each of the core programs.

Where the lead official represents more than one core program, that official must ensure adequate representation of the needs of all core programs under his or her jurisdiction.

(2) Two or more chief elected officials (collectively representing both cities and

counties, where appropriate).

(B) May include other appropriate representatives and officials designated by the Governor, such as, but not limited to, State agency officials responsible for one-stop partner programs, economic development or juvenile justice programs in the State, individuals who represent an Indian tribe or tribal organization as defined in WIOA sec. 166(b), and State agency officials responsible for education programs in the State, including chief executive officers of community colleges and other

institutions of higher education.

(c) The Governor must select a chairperson for the State Board from the business representatives on the board described in paragraph (b)(3)(i) of this section).

(d) The Governor must establish by-laws that at a minimum address:

(1) The nomination process used by the Governor to select the State Board chair and members;

(2) The term limitations and how the term appointments will be staggered to ensure only a portion of membership expire in a given year;

(3) The process to notify the Governor of a board member vacancy to ensure a prompt nominee;

(4) The proxy and alternative designee process that will be used when a board member is unable to attend a meeting and assigns a designee as per the requirements at 679.110(d)(4);

(i) If the alternative designee is a business representative, he or she must have optimum policy-making hiring authority.

(ii) Other alternative designees should have demonstrated experience and expertise and optimum policy-making authority.

(5) The use of technology, such as phone and Web-based meetings, that must be used to promote board member participation; and

(6) The process to ensure members actively participate in convening the workforce development system's stakeholders, brokering relationships with a diverse range of employers, and leveraging support for workforce development activities; and

(7) Other conditions governing appointment or membership on the State Board as deemed appropriate by the Governor.

(e)) Members who represent organizations, agencies or other entities described in (b)(3)(ii) through (iii) above must be individuals who have optimum policy-making authority in the organizations that they represent.

(f)(1) A State Board member may not represent more than one of the categories described in:

(i) Paragraph (b)(3)(i) of this section (business representatives);

(ii) Paragraph (b)(3)(ii) of this section (workforce representatives); or

(iii) Paragraph (b)(3)(iii) of this section (government representatives).

(2) A State Board member may not serve as a representative of more than one subcategory under paragraph (b)(3)(ii) of this section.

(3) A State Board member may not serve as a representative of more than one subcategory under paragraph (b)(3)(iii) of this section, except that where a single government agency is responsible for multiple required programs, the head of the agency may represent each of the required programs.

(g) All required board members must have voting privileges. The Governor may also convey voting privileges to non-required members.

§ 679.120 What is meant by the terms "optimum policy-making authority" and

"demonstrated experience and expertise"?

For purposes of § 679.110:

(a)) A representative with "optimum policy-making authority" is an individual who can reasonably be expected to speak affirmatively on behalf of the entity he or she represents and to commit that entity to a chosen course of action.

(b) A representative with "demonstrated experience and expertise" means an individual with documented leadership in developing or implementing workforce development, human resources, training and development, or a core program function.

§ 679.130 What are the functions of the State Board?

Under WIOA sec. 101(d), the State Board must assist the Governor in the:

(a)) Development, implementation, and modification of the 4-year State Plan;

(b) Review of statewide policies, programs, and recommendations on actions that should be taken by the State to align workforce development programs to support a comprehensive and streamlined workforce development system. Such review of policies, programs, and

recommendations must include a review and provision of comments on the State plans, if any, for programs and activities of one-stop partners that are not core programs.

(c)) Development and continuous improvement of the workforce development system, including—

(1) Identification of barriers and means for removing barriers to better coordinate, align, and avoid duplication among programs and activities;

(2) Development of strategies to support career pathways for the purpose of providing individuals, including low-skilled adults, youth, and individuals with barriers to employment, including individuals with disabilities, with workforce investment activities, education, and supportive services to enter or retain employment;

(3) Development of strategies to provide effective outreach to and improved access for individuals and employers who could benefit from workforce development system;

(4) Development and expansion of strategies to meet the needs of employers, workers, and jobseekers particularly through industry or sector partnerships related to in-demand industry sectors and occupations;

(5) Identification of regions, including planning regions for the purposes of WIOA sec. 106(a), and the designation of local areas under WIOA sec. 106, after consultation with Local Boards and chief elected officials;

(6) Development and continuous improvement of the one-stop delivery system in local

areas, including providing assistance to Local Boards, one-stop operators, one-stop partners, and

providers. Such assistance includes assistance with planning and delivering services, including training and supportive services, to support effective delivery of services to workers, jobseekers, and employers; and

(7) Development of strategies to support staff training and awareness across the workforce development system and its programs.

(d) Development and updating of comprehensive State performance and accountability measures to assess core program effectiveness under WIOA sec. 116(b).

(e) Identification and dissemination of information on best practices, including best practices for –

(1) The effective operation of one-stop centers, relating to the use of business outreach, partnerships, and service delivery strategies, including strategies for serving individuals with barriers to employment;

(2) The development of effective Local Boards, which may include information on factors that contribute to enabling Local Boards to exceed negotiated local levels of performance, sustain fiscal integrity, and achieve other measures of effectiveness; and

(3) Effective training programs that respond to real-time labor market analysis, that effectively use direct assessment and prior learning assessment to measure an individual's prior knowledge, skills, competencies, and experiences for adaptability, to support efficient placement into employment or career pathways.

(f)) Development and review of statewide policies affecting the coordinated provision of services through the State's one-stop delivery system described in WIOA sec. 121(e), including the development of –

(1) Objective criteria and procedures for use by Local Boards in assessing the effectiveness, physical and programmatic accessibility and continuous improvement of one-stop centers. Where a Local Board serves as the one-stop operator, the State Board must use such criteria to assess and certify the one-stop center;

(2) Guidance for the allocation of one-stop center infrastructure funds under 121(h); and

(3) Policies relating to the appropriate roles and contributions of entities carrying out one-stop partner programs within the one-stop delivery system, including approaches to facilitating equitable and efficient cost allocation in the system.

(g) Development of strategies for technological improvements to facilitate access to, and improve the quality of services and activities provided through the one-stop delivery system, including such improvements to –

(1) Enhance digital literacy skills (as defined in sec. 202 of the Museum and Library Service Act, 20 U.S.C. 9101);

(2) Accelerate acquisition of skills and recognized post-secondary credentials by participants;

(3) Strengthen professional development of providers and workforce professionals; and

(4) Ensure technology is accessible to individuals with disabilities and individuals residing in remote areas;

(h) Development of strategies for aligning technology and data systems across one-stop

partner programs to enhance service delivery and improve efficiencies in reporting on performance accountability measures, including design implementation of common intake, data collection, case management information, and performance accountability measurement and

reporting processes and the incorporation of local input into such design and implementation to improve coordination of services across one-stop partner programs;

(i) Development of allocation formulas for the distribution of funds for employment and training activities for adults and youth workforce investment activities, to local areas as permitted under WIOA secs. 128(b)(3) and 133(b)(3);

(j) Preparation of the annual reports described in paragraphs (1) and (2) of WIOA sec.

116(d);

(k) Development of the statewide workforce and labor market information system described in sec. 15(e) of the Wagner-Peyser Act; and

(l) Development of other policies as may promote statewide objectives for and enhance the performance of the workforce development system in the State.

§ 679.140 How does the State Board meet its requirement to conduct business in an open

manner under the "sunshine provision" of the Workforce Innovation and Opportunity

<u>Act</u>?

(a) The State Board must conduct business in an open manner as required by WIOA sec. 101(g).

(b) The State Board must make available to the public, on a regular basis through electronic means and open meetings, information about the activities and functions of the State Board, including:

(1) The State Plan, or modification to the State Plan, prior to submission of the Plan or modification of the Plan;

(2) Information regarding membership;

(3) Minutes of formal meetings of the State Board upon request;

(4) State Board by-laws as described at § 679.110(d).

§ 679.150 Under what circumstances may the Governor select an alternative entity in place

of the State Workforce Development Board?

(a) The State may use any State entity that meets the requirements of WIOA sec. 101(e) to perform the functions of the State Board. This may include:

(1) A State council;

(2) A State Workforce Development Board within the meaning of the Workforce Investment Act of 1998, as in effect on the day before the date of enactment of WIOA; or

(3) A combination of regional Workforce Development Boards or similar entity.

(b) If the State uses an alternative entity, the State Plan must demonstrate that the alternative entity meets all three of the requirements of WIOA sec. 101(e)(1):

(1) Was in existence on the day before the date of enactment of the Workforce Investment Act of 1998;

(2) Is substantially similar to the State Board described in WIOA secs. 101(a)-(c) and § 679.110; and

(3) Includes representatives of business and labor organizations in the State.

(c) If the alternative entity does not provide representatives for each of the categories required under WIOA sec. 101(b), the State Plan must explain the manner in which the State will ensure an ongoing role for any unrepresented membership group in the workforce development system. The State Board must maintain an ongoing and meaningful role for an unrepresented membership group, including entities carrying out the core programs, by such methods as:

(1) Regularly scheduled consultations with entities within the unrepresented membership

groups;

(2) Providing an opportunity for input into the State Plan or other policy development by unrepresented membership groups, and

(3) Establishing an advisory committee of unrepresented membership groups.

(d) If the membership structure of the alternative entity had a significant change after August 7, 1998, the entity will no longer be eligible to perform the functions of the State Board. In such case, the Governor must establish a new State Board which meets all of the criteria of WIOA sec. 101(b).

(e)) A significant change in the membership structure includes a significant change in the organization of the alternative entity or in the categories of entities represented on the alternative entity which requires a change to the alternative entity's charter or a similar document that defines the formal organization of the alternative entity, regardless of whether the required change to the

document has or has not been made.

(1) A significant change in the membership structure occurs when the alternative entity adds members to represent groups not previously represented on the entity.

(2) A significant change in the membership structure does not occur when the alternative entity adds members to an existing membership category, when it adds non-voting members, or when it adds members to fill a vacancy created in an existing membership category.

(f) In 20 CFR parts 675 through 687, all references to the State Board also apply to an alternative entity used by a State.

§ 679.160 Under what circumstances may the State Board hire staff?

(a) The State Board may hire a director and other staff to assist in carrying out the functions described in WIOA sec. 101(d) and § 679.130 using funds described in WIOA sec. 129(b)(3) or sec. 134(a)(3)(B)(i).

(b) The State Board must establish and apply a set of objective qualifications for the position of director that ensures the individual selected has the requisite knowledge, skills, and abilities to meet identified benchmarks and to assist in effectively carrying out the functions of the State Board.

(c) The director and staff must be subject to the limitations on the payment of salary and bonuses described in WIOA sec. 194(15).

Subpart B—Workforce Innovation and Opportunity Act Local Governance (Workforce Development Areas)

§ 679.200 What is the purpose of requiring States to identify regions?

The purpose of identifying regions is to align workforce development activities and resources with larger regional economic development areas and available resources to provide coordinated and efficient services to both job seekers and employers.

§ 679.210 What are the requirements for identifying a region?

(a) The Governor must assign local areas to a region prior to submission of the State Unified or Combined Plan, in order for the State to receive WIOA title I-B adult, dislocated worker, and youth allotments.

(b) The Governor must develop a policy and process for identifying regions. Such policy must include:

(1) Consultation with the Local Boards and chief local elected officials in the local area(s) as required in WIOA sec. 102(b)(2)(D)(i)(II) and WIOA sec. 106(a)(1); and

(2) Consideration of the extent to which the local areas in a proposed region:

(i) Share a single labor market;

(ii) Share a common economic development area; and

(iii) Possess the Federal and non-Federal resources, including appropriate education and training institutions, to administer activities under WIOA subtitle B.

(c) In addition to the required criteria described in paragraph (b)(2) of this section, other factors the Governor may also consider include:

(1) Population centers

(2) Commuting patterns

(3) Land ownership

(4) Industrial composition

(5) Location quotients

(6) Labor force conditions

(7) Geographic boundaries

(8) Additional factors as determined by the Secretary

(d) Regions must consist of:

(1) One local area;

(2) Two or more contiguous local areas in a single State; or

(3) Two or more contiguous local areas in two or more States.

(e)) Planning regions are those regions described in paragraph (d)(2) or (3) of this section. Planning regions are subject to the regional planning requirements in § 679.510.

§ 679.220 What is the purpose of the local workforce development area?

(a) The purpose of a local area is to serve as a jurisdiction for the administration of workforce development activities and execution of adult, dislocated worker, and youth funds allocated by the State. Such areas may be aligned with a region identified in WIOA sec.

106(a)(1) or may be components of a planning region, each with its own Local Workforce Development Board. Also, significantly, local workforce development areas are the areas within which Local Workforce Development Boards oversee their functions, including strategic planning, operational alignment and service delivery design, and a jurisdiction where partners align resources at a sub-State level to design and implement overall service delivery strategies.

(b) The Governor must designate local workforce development areas (local areas) in order for the State to receive adult, dislocated worker, and youth funding under title I, subtitle B of WIOA.

§ 679.230 What are the general procedural requirements for designation of local

workforce development areas?

As part of the process of designating or redesignating a local workforce development area, the Governor must develop a policy for designation of local workforce development areas that must include:

(a)) Consultation with the State Board;

(b) Consultation with the chief elected officials and affected Local Boards; and

(c)) Consideration of comments received through a public comment process which must:

(1) Offer adequate time for public comment prior to designation of the local workforce development area; and

(2) Provide an opportunity for comment by representatives of Local Boards, chief elected officials, businesses, institutions of higher education, labor organizations, other primary stakeholders, and the general public regarding the designation of the local area.

§ 679.240 What are the substantive requirements for designation of local workforce

development areas that were not designated as local areas under the Workforce Investment

Act of 1998?

(a) Except as provided in § 679.250, the Governor may designate or redesignate a local workforce development area in accordance with policies and procedures developed by the Governor, which must include at a minimum consideration of the extent to which the proposed area:

(1) Is consistent with local labor market areas;

(2) Has a common economic development area; and

(3) Has the Federal and non-Federal resources, including appropriate education and training institutions, to administer activities under WIOA subtitle B.

(b) The Governor may approve a request at any time for designation as a workforce development area from any unit of general local government, including a combination of such units, if the State Board determines that the area meets the requirements of paragraph (a)(1) of this section and recommends designation.

(c)) Regardless of whether a local area has been designated under this section or § 679.250, the Governor may redesignate a local area if the redesignation has been requested by a local area and the Governor approves the request.

§ 679.250 What are the requirements for initial and subsequent designation of workforce

development areas that had been designated as local areas under the Workforce

Investment Act of 1998?

(a) If the chief elected official and Local Board in a local area submits a request for initial designation, the Governor must approve the request if, for the 2 program years preceding the date of enactment of WIOA, the following criteria are met:

(1) The local area was designated as a local area for purposes of WIA;

(2) The local area performed successfully; and

(3) The local area sustained fiscal integrity.

(b) If a local area is approved for initial designation, the period of initial designation applies to program years 2015 and 2016.

(c)) After the period of initial designation, if the chief elected official and Local Board in a local area submits a request for subsequent designation, the Governor must approve the request if the following criteria are met for the 2 program years of initial designation:

(1) The local area performed successfully;

(2) The local area sustained fiscal integrity; and

(3) In the case of a local area in a planning region, the local area met the regional planning requirements described in WIOA sec.106(c) paragraph (1).

(d) The Governor:

(1) May review a local area designated under paragraph (c) of this section at any time to evaluate whether that the area continues to meet the requirements for subsequent designation under that paragraph; and

(2) Must review a local area designated under paragraph (c) of this section before submitting its State Plan during each 4-year State planning cycle to evaluate whether the area continues to meet the requirements for subsequent designation under that paragraph.

(e) For purposes of subsequent designation under paragraphs (c) and (d) of this section, the local area and chief elected official must be considered to have requested continued designation unless the local area and chief elected official notify the Governor that they no longer seek designation.

(f) Local areas designated under § 679.240 or States designated as single-area States under § 679.270 are not subject to the requirements described in paragraph (c) of this section related to the subsequent designation of a local area.

(g) Rural concentrated employment programs are not eligible to apply for initial designation as a local area under paragraph (c) of this section.

§ 679.260 What do the terms "performed successfully" and "sustained fiscal integrity"

mean for purposes of designating local areas?

(a) For the purpose of initial local area designation, the term "performed successfully"

means that the local area met or exceeded the levels of performance the Governor negotiated with Local Board and chief elected official under WIA sec. 136(c) for the last 2 full program years before the enactment of WIOA, and that the local area has not failed any individual measure for the for the last 2 consecutive program years before the enactment of WIOA.

(1) The terms "met or exceeded" and "failure" must be defined by the Governor consistent with how those terms were defined at the time the performance levels were negotiated.

(2) When designating local areas, the Governor may not retroactively apply any higher

WIOA threshold to performance negotiated and achieved under WIA.

(b) For the purpose of determining subsequent local area designation, the term "performed successfully" means that the local area met or exceeded the levels of performance the Governor negotiated with Local Board and chief elected official for core indicators of performance described under WIA sec. 136(c) or WIOA sec. 116(b)(2)(A), as appropriate, and in accordance with a State-established definition, provided in the State Plan, of met or exceeded performance.

(c) For the purpose of determining initial and subsequent local area designation under § 679.250(a) and (c), the term "sustained fiscal integrity" means that the Secretary has not made a formal determination that either the grant recipient or the administrative entity of the area misexpended funds due to willful disregard of the requirements of the provision involved, gross negligence, or failure to comply with accepted standards of administration for the 2-year period preceding the determination.

§ 679.270 What are the special designation provisions for single-area States?

(a) The Governor of any State that was a single-State local area under the Workforce Investment Act as in effect on July 1, 2013 may designate the State as a single-State local workforce development area under WIOA.

(b) The Governor of a State local workforce development area under paragraph (a) of this section who seeks to designate the State as a single-State local workforce development area under WIOA must:

(1) Identify the State as a single State local area in the Unified or Combined State Plan;

and

(2) Include the local plan for approval as part of the Unified or Combined State Plan.

(c) The State Board for a single-State local workforce development area must act as the Local Board and carry out the functions of the Local Board in accordance with WIOA sec. 107 and § 679.370, except that the State is not required to meet and report on a set of local performance accountability measures.

§ 679.280 How does the State fulfill the requirement to provide assistance to local areas

within a planning region that wish to redesignate into a single local area?

(a)) When the chief elected officials and Local Boards of each local area within a planning region make a request to the Governor to redesignate into a single local area, the State Workforce Development Board must authorize statewide adult, dislocated worker (WIOA sec. 133(a)(1)), and youth program (WIOA sec. 128(a)) funds to facilitate such redesignation.

(b) When statewide funds are not available, the State may provide funds for redesignation in the next available program year.

(c)) Redesignation activities that may be carried out by the local areas include:

(1) Convening sessions and conferences;

(2) Renegotiation of contracts and agreements; and

(3) Other activities directly associated with the redesignation as deemed appropriate by the State Board.

§ 679.290 What right does an entity have to appeal the Governor's decision rejecting a

request for designation as a workforce development area?

(a)) A unit of local government (or combination of units) or a local area which has

requested but has been denied its request for designation as a workforce development area under § 679.250 may appeal the decision to the State Board, in accordance with appeal procedures

established in the State Plan and 20 CFR 683.630(a).

(b) If a decision on the appeal is not rendered in a timely manner or if the appeal to the State Board does not result in designation, the entity may request review by the Secretary of Labor, under the procedures set forth at 20 CFR 683.640.

Subpart C—Local Boards

§ 679.300 What is the vision and purpose of the Local Workforce Development Board?

(a) The vision for the Local Workforce Development Board (Local Board) is to serve as a strategic leader and convener of local workforce development system stakeholders. The Local Board partners with employers and the workforce development system to develop policies and investments that support workforce system strategies that support regional economies, the development of effective approaches including local and regional sector partnerships and career pathways, and high quality, customer centered service delivery and service delivery approaches;

(b) The purpose of the Local Board is to –

(1) Provide strategic and operational oversight in collaboration with the required and additional partners and workforce stakeholders to help develop a comprehensive and high-quality workforce development system in the local area and larger planning region;

(2) Assist in the achievement of the State's strategic and operational vision and goals as outlined in the Unified State Plan or Combined State Plan; and

(3) Maximize and continue to improve the quality of services, customer satisfaction, effectiveness of the services provided.

§ 679.310 What is the Local Workforce Development Board?

(a) The Local Board is appointed by the chief elected official(s) in each local area in accordance with State criteria established under WIOA sec. 107(b), and is certified by the Governor every 2 years, in accordance with WIOA sec. 107(c)(2).

(b) In partnership with the chief elected official(s), the Local Board sets policy for the portion of the statewide workforce investment system within the local area and consistent with State policies.

(c) The Local Board and the chief elected official(s) may enter into an agreement that describes the respective roles and responsibilities of the parties.

(d) The Local Board, in partnership with the chief elected official(s), develops the local plan and performs the functions described in WIOA sec. 107(d) and § 679.370.

(e) If a local area includes more than one unit of general local government in accordance with WIOA sec. 107(c)(1)(B), the chief elected officials of such units may execute an agreement to

describe their responsibilities for carrying out the roles and responsibilities. If the chief elected officials are unable to reach agreement after a reasonable effort, the Governor may appoint the members of the Local Board from individuals nominated or recommended as specified in WIOA sec. 107(b).

(f) If the State Plan indicates that the State will be treated as a local area under WIOA, the State Board must carry out the roles of the Local Board in accordance with WIOA sec. 107, except that the State is not required to meet and report on a set of local performance accountability measures.

(g) The chief local elected official must establish by-laws, consistent with State policy for Local Board membership, that at a minimum address:

(1) The nomination process used by the chief local elected official to elect the Local Board chair and members;

(2) The term limitations and how the term appointments will be staggered to ensure only a portion of membership expire in a given year;

(3) The process to notify the chief local elected official of a board member vacancy to ensure a prompt nominee;

(4) The proxy and alternative designee process that will be used when a board member is unable to attend a meeting and assigns a designee as per the requirements at § 679.110(d)(4);

(5) The use of technology, such as phone and Web-based meetings, that will be used to promote board member participation; and

(6) The process to ensure board members actively participate in convening the workforce

development system's stakeholders, brokering relationships with a diverse range of employers, and leveraging support for workforce development activities.

(7) A description of any other conditions governing appointment or membership on the State Board as deemed appropriate by the chief local elected official.

§ 679.320 Who are the required members of the Local Workforce Development Board?

(a) For each local area in the State, the members of Local Board must be selected by the chief elected official consistent with criteria established under WIOA sec. 107(b)(1) and criteria established by the Governor, and must meet the requirements of WIOA sec. 107(b)(2).

(b) A majority of the members of the Local Board must be representatives of business in the local area. At a minimum, two members must represent small business as defined by the U.S. Small Business Administration. Business representatives serving on Local Boards may also serve on the State Board. Each business representative must meet the following criteria:

(1) be an owner, chief executive officer, chief operating officer, or other individual with optimum policy-making or hiring authority; and

(2) provide employment opportunities in in-demand industry sectors or occupations, as those terms are defined in WIOA sec. 3(23).

(c) At least 20 percent of the members of the Local Board must be workforce

representatives. These representatives:

(1) Must include two or more representatives of labor organizations, where such organizations exist in the local area. Where labor organizations do not exist, representatives must be selected from other employee representatives;

(2) Must include one or more representatives of a joint labor-management, or union affiliated, registered apprenticeship program within the area who must be a training director or a member of a labor organization. If no union affiliated registered apprenticeship programs exist in the area, a representative of a registered apprenticeship program with no union affiliation must be appointed, if one exists;

(3) May include one or more representatives of community-based organizations that have demonstrated experience and expertise in addressing the employment, training or education needs of individuals with barriers to employment, including organizations that serve veterans or provide or support competitive integrated employment for individuals with disabilities; and

(4) May include one or more representatives of organizations that have demonstrated experience and expertise in addressing the employment, training, or education needs of eligible youth, including representatives of organizations that serve out-of-school youth.

(d) The Local Board must also include:

(1) At least one eligible provider administering adult education and literacy activities under WIOA title II;

(2) At least one representative from an institution of higher education providing workforce investment activities, including community colleges; and

(3) At least one representative from each of the following governmental and economic and community development entities:

(i) Economic and community development entities;

(ii) The State employment service office under the Wagner-Peyser Act (29 U.S.C. 49 et seq.) serving the local area; and

(iii) The programs carried out under title I of the Rehabilitation Act of 1973, other than sec. 112 or part C of that title;

(e) The membership of Local Boards may include individuals or representatives of other appropriate entities in the local area, including:

(1) Entities administering education and training activities who represent local educational agencies or community-based organizations with demonstrated expertise in addressing the education or training needs for individuals with barriers to employment;

(2) Governmental and economic and community development entities who represent transportation, housing, and public assistance programs;

(3) Philanthropic organizations serving the local area; and

(4) Other appropriate individuals as determined by the chief elected official.

(f)) Members must be individuals with optimum policy-making authority within the

entities they represent.

(g) Chief elected officials must establish a formal nomination and appointment process, consistent with the criteria established by the Governor and State Board under sec. 107(b)(1) of WIOA for appointment of members of the Local Boards, that ensures:

(1) Business representatives are appointed from among individuals who are nominated by local business organizations and business trade associations.

(2) Labor representatives are appointed from among individuals who are nominated by local labor federations (or, for a local area in which no employees are represented by such organizations, other representatives of employees); and

(3) When there is more than one local area provider of adult education and literacy activities under title II, or multiple institutions of higher education providing workforce investment activities as described in WIOA 107(b)(2)(C)(i) or (ii), nominations are solicited from those particular entities. (WIOA sec. 107(b)(6))

(h) An individual may be appointed as a representative of more than one entity if the individual meets all the criteria for representation, including the criteria described in paragraphs

(c)) through (g) of this section, for each entity.

(i) All required board members must have voting privilege. The chief elected official may convey voting privileges to non-required members.

§ 679.330 Who must chair a Local Board?

The Local Board must elect a chairperson from among the business representatives on the board. (WIOA sec. 107(b)(3))

§ 679.340 What is meant by the terms "optimum policy-making authority" and "demonstrated experience and expertise"?

For purposes of selecting representatives to Local Workforce Development Boards:

(a)) A representative with "optimum policy-making authority" is an individual who can reasonably be expected to speak affirmatively on behalf of the entity he or she represents and to commit that entity to a chosen course of action.

(b) A representative with "demonstrated experience and expertise" means an individual who:–

(1) Is a workplace learning advisor as defined in WIOA sec. 3(70);

(2) Contributes to the field of workforce development, human resources, training and development, or a core program function; or

(3) The Local Board recognizes for valuable contributions in education or workforce

development related fields.

§ 679.350 What criteria will be used to establish the membership of the Local Board?

The Local Board is appointed by the chief elected official(s) in the local area in accordance with State criteria established under WIOA sec. 107(b), and is certified by the Governor every 2 years, in accordance with WIOA sec. 107(c)(2).

§ 679.360 What is a standing committee, and what is its relationship to the Local Board?

(a)) Standing committees may be established by the Local Board to provide information and assist the Local Board in carrying out its responsibilities under WIOA sec. 107. Standing committees must be chaired by a member of the Local Board, may include other members of the Local Board, and must include other individuals appointed by the Local Board who are not members of the Local Board and who have demonstrated experience and expertise in accordance with § 679.340(b) and as determined by the Local Board. Standing committees may include each of the following:

(1) A standing committee to provide information and assist with operational and other issues relating to the one-stop delivery system, which may include representatives of the one- stop partners.

(2) A standing committee to provide information and to assist with planning, operational,

and other issues relating to the provision of services to youth, which must include community- based organizations with a demonstrated record of success in serving eligible youth.

(3) A standing committee to provide information and to assist with operational and other issues relating to the provision of services to individuals with disabilities, including issues relating to compliance with WIOA sec. 188, if applicable, and applicable provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) regarding providing programmatic and physical access to the services, programs, and activities of the one-stop delivery system, as well as appropriate training for staff on providing supports for or accommodations to, and finding employment opportunities for, individuals with disabilities.

(b) The Local Board may designate other standing committees in addition to those specified in paragraph (a) of this section.

(c) Local Boards may designate an entity in existence as of the date of the enactment of WIOA, such as an effective youth council, to serve as a standing committee as long as the entity meets the requirements of WIOA sec. 107(b)(4).

§ 679.370 What are the functions of the Local Board?

As provided in WIOA sec. 107(d), the Local Board must:

(a)) Develop and submit a 4-year local plan for the local area, in partnership with the chief elected official and consistent with WIOA sec. 108;

(b) If the local area is part of a planning region that includes other local areas, develop

and submit a regional plan in collaboration with other local areas. If the local area is part of a planning region, the local plan must be submitted as a part of the regional plan;

(c)) Conduct workforce research and regional labor market analysis to include:

(1) analyses and regular updates of economic conditions, needed knowledge and skills, workforce, and workforce development (including education and training) activities to include an analysis of the strengths and weaknesses (including the capacity to provide) of such services to address the identified education and skill needs of the workforce and the employment needs of employers;

(2) Assistance to the Governor in developing the statewide workforce and labor market information system under the Wagner-Peyser Act for the region;

(3) Other research, data collection, and analysis related to the workforce needs of the regional economy as the board, after receiving input from a wide array of stakeholders, determines to be necessary to carry out its functions.

(d) Convene local workforce development system stakeholders to assist in the development of the local plan under § 679.550 and in identifying non-Federal expertise and resources to leverage support for workforce development activities. Such stakeholders may assist the Local Board and standing committees in carrying out convening, brokering, and leveraging functions at the direction of the Local Board;

(e) Lead efforts to engage with a diverse range of employers and other entities in the region in order to:

(1) Promote business representation (particularly representatives with optimum policy-

making or hiring authority from employers whose employment opportunities reflect existing and emerging employment opportunities in the region) on the Local Board;

(2) Develop effective linkages (including the use of intermediaries) with employers in the region to support employer utilization of the local workforce development system and to support local workforce investment activities;

(3) Ensure that workforce investment activities meet the needs of employers and support economic growth in the region by enhancing communication, coordination, and collaboration among employers, economic development entities, and service providers; and

(4) Develop and implement proven or promising strategies for meeting the employment and skill needs of workers and employers (such as the establishment of industry and sector partnerships), that provide the skilled workforce needed by employers in the region, and that expand employment and career advancement opportunities for workforce development system participants in in-demand industry sectors or occupations.

(f)) With representatives of secondary and post-secondary education programs, lead efforts to develop and implement career pathways within the local area by aligning the employment, training, education, and supportive services that are needed by adults and youth, particularly individuals with barriers to employment.

(g) Lead efforts in the local area to identify and promote proven and promising strategies and initiatives for meeting the needs of employers, workers and jobseekers, and identify and disseminate information on proven and promising practices carried out in other local areas for

meeting such needs.

(h) Develop strategies for using technology to maximize the accessibility and effectiveness of the local workforce development system for employers, and workers and jobseekers, by:

(1) Facilitating connections among the intake and case management information systems of the one-stop partner programs to support a comprehensive workforce development system in the local area;

(2) Facilitating access to services provided through the one-stop delivery system involved, including access in remote areas;

(3) Identifying strategies for better meeting the needs of individuals with barriers to employment, including strategies that augment traditional service delivery, and increase access to services and programs of the one-stop delivery system, such as improving digital literacy skills; and

(4) Leveraging resources and capacity within the local workforce development system, including resources and capacity for services for individuals with barriers to employment.

(i) In partnership with the chief elected official for the local area:

(1) Conduct oversight of youth workforce investment activities authorized under WIOA sec. 129(c), adult and dislocated worker employment and training activities under WIOA secs. 134 (c) and (d); and entire one-stop delivery system in the local area; and

(2) Ensure the appropriate use and management of the funds provided under WIOA

subtitle B for the youth, adult, and dislocated worker activities and one-stop delivery system in the local area; and

(3) Ensure the appropriate use management, and investment of funds to maximize performance outcomes under WIOA sec. 116.

(j) Negotiate and reach agreement on local performance measures with the chief elected official and the Governor.

(k) Negotiate with CLEO and required partners on the methods for funding the

infrastructure costs of one-stop centers in the local area in accordance with § 678.715 or must notify the Governor if they fail to reach agreement at the local level and will use a State infrastructure funding mechanism.

(l) Select the following providers in the local area, and where appropriate terminate such providers in accordance with 2 CFR part 200:

(1) Providers of youth workforce investment activities through competitive grants or contracts based on the recommendations of the youth standing committee (if such a committee is established); however, if the Local Board determines there is an insufficient number of eligible providers in a local area, the Local Board may award contracts on a sole-source basis as per the provisions at WIOA sec. 123(b);

(2) Providers of training services consistent with the criteria and information requirements established by the Governor and WIOA sec. 122;

(3) Providers of career services through the award of contracts, if the one-stop operator does not provide such services; and

(4) One-stop operators in accordance with §§ 678.600 through 678.635.

(m) In accordance with WIOA sec. 107(d)(10)(E) work with the State to ensure there are sufficient numbers and types of providers of career services and training services serving the local area and providing the services in a manner that maximizes consumer choice, as well as providing opportunities that lead to competitive integrated employment for individuals with disabilities.

(n) Coordinate activities with education and training providers in the local area, including:

(1) Reviewing applications to provide adult education and literacy activities under title II for the local area to determine whether such applications are consistent with the local plan;

(2) making recommendations to the eligible agency to promote alignment with such plan; and

(3) Replicating and implementing cooperative agreements to enhance the provision of services to individuals with disabilities and other individuals, such as cross training of staff, technical assistance, use and sharing of information, cooperative efforts with employers, and other efforts at cooperation, collaboration, and coordination.

(o) Develop a budget for the activities of the Local Board, with approval of the chief elected official and consistent with the local plan and the duties of the Local Board.

(p) Assess, on an annual basis, the physical and programmatic accessibility of all one-stop centers in the local area, in accordance with WIOA sec. 188, if applicable, and applicable

provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

(q) Certification of one-stop centers in accordance with § 678.800.

§ 679.380 How does the Local Board satisfy the consumer choice requirements for career

services and training services?

(a) In accordance with WIOA sec. 122 and in working with the State, the Local Board satisfies the consumer choice requirement for training services by:

(1) Determining the initial eligibility of entities providing a program of training services, renewing the eligibility of providers, and considering the possible termination of an eligible provider due to the provider's submission of inaccurate eligibility and performance information or the provider's substantial violation of WIOA;

(2) Working with the State to ensure there are sufficient numbers and types of providers

of training services, including eligible providers with expertise in assisting individuals with

disabilities and eligible providers with expertise in assisting adults in need of adult education and literacy activities described under WIOA sec. 107(d)(10)(E), serving the local area;

(3) Ensuring the dissemination and appropriate use of the State list through the local one-

stop system.

(4) Receiving performance and cost information from the State and disseminating this information through the one-stop delivery systems within the State; and

(5) Providing adequate access to services for individuals with disabilities.

(b) Working with the State, the Local Board satisfies the consumer choice requirement for career services by:

(1) Determining the career services that are best performed by the one-stop operator consistent with §§ 678.620 and 678.625 and career services that require contracting with a career service provider;

(2) Identifying a wide-array of potential career service providers and awarding contracts where appropriate including to providers to ensure:

(i) Sufficient access to services for individuals with disabilities, including opportunities that lead to integrated, competitive employment for people with disabilities;

(ii) Sufficient access for Adult Education and literacy activities.

§ 679.390 How does the Local Board meet its requirement to conduct business in an open

manner under the "sunshine provision" of the Workforce Innovation and Opportunity

<u>Act</u>?

The Local Board must conduct its business in an open manner as required by WIOA sec. 107(e), by making available to the public, on a regular basis through electronic means and open meetings, information about the activities of the Local Board. This includes:

(a) Information about the Local Plan, or modification to the Local Plan, before submission of the plan;

(b) List and affiliation of Local Board members;

(c)) Selection of one-stop operators;

(d) Award of grants or contracts to eligible providers of workforce investment activities including providers of youth workforce investment activities;

(e)) Minutes of formal meetings of the Local Board; and

(f) Local Board by-laws, consistent with § 679.310(g).

§ 679.400 Who are the staff to the Local Board and what is their role?

(a) WIOA sec. 107(f) grants Local Boards authority to hire a director and other staff to assist in carrying out the functions of the Local Board.

(b) Local Boards must establish and apply a set of qualifications for the position of director that ensures the individual selected has the requisite knowledge, skills, and abilities to meet identified benchmarks and to assist in carrying out the functions of the Local Board.

(c) The Local Board director and staff must be subject to the limitations on the payment of salary and bonuses described in WIOA sec. 194(15).

(d) In general, Local Board staff may only assist the Local Board fulfill the required functions at WIOA sec. 107(d).

(e)) Should the board select an entity to staff the board that provides additional workforce functions beyond the functions described at WIOA sec. 107(d), such an entity is required to enter into a written agreement with the Local Board and chief elected official(s) to clarify their roles and responsibilities as required by § 679.430.

§ 679.410 Under what conditions may a Local Board directly be a provider of career

services, or training services, or act as a one-stop operator?

(a)(1) A Local Board may be selected as a one-stop operator:

(i) Through sole source procurement in accordance with § 678.610; or

(ii) Through successful competition in accordance with § 678.615.

(2) The chief elected official in the local area and the Governor must agree to the selection described in paragraph (a)(1) of this section.

(3) Where a Local Board acts as a one-stop operator, the State must ensure certification of one-stop centers in accordance with § 662.600.

(b) A Local Board may act as a provider career services only with the agreement of the chief elected official in the local area and the Governor.

(c)) A Local Board is prohibited from providing training services, unless the Governor grants a waiver in accordance with the provisions in WIOA sec. 107(g)(1).

(1) The State must develop a procedure for approving waivers that includes the criteria at WIOA sec. 107(g)(1)(B)(i):

(i) Satisfactory evidence that there is an insufficient number of eligible providers of such a program of training services to meet local demand in the local area;

(ii) Information demonstrating that the board meets the requirements for an eligible provider of training services under WIOA sec. 122; and

(iii) Information demonstrating that the program of training services prepares

participants for an in-demand industry sector or occupation in the local area.

(2) The local area must make the proposed request for a waiver available to eligible providers of training services and other interested members of the public for a public comment period of not less than 30 days and includes any comments received during this time in the final request for the waiver.

(3) The waiver must not exceed the duration of the local plan and may be renewed by submitting a new waiver request consistent with paragraphs (c)(1) and (2) of this section for additional periods, not to exceed the durations of such subsequent plans.

(4) The Governor may revoke the waiver if the Governor determines the waiver is no longer needed or that the Local Board involved has engaged in a pattern of inappropriate referrals to training services operated by the Local Board.

(d) The restrictions on the provision of career and training services by the Local Board, and on as one-stop operator, also apply to staff of the Local Board.

§ 679.420 What are the functions of the local fiscal agent?

(a) In order to assist in administration of the grant funds, the chief elected official or the Governor, where the Governor serves as the local grant recipient for a local area, may designate an entity to serve as a local fiscal agent. Designation of a fiscal agent does not relieve the chief elected official or Governor of liability for the misuse of grant funds. If the CEO designates a fiscal agent, the CEO must ensure this agent has clearly defined roles and responsibilities.

(b) In general the fiscal agent is responsible for the following functions:

(1) Receive funds

(2) Ensure sustained fiscal integrity and accountability for expenditures of funds in accordance with Office of Management and Budget circulars, WIOA and the corresponding Federal Regulations and State policies

(3) Respond to audit financial findings

(4) Maintain proper accounting records and adequate documentation

(5) Prepare financial reports

(6) Provide technical assistance to subrecipients regarding fiscal issues

(c) At the direction of the Local Board or the State Board in single State areas, the fiscal agent may have the following additional functions:

(1) Procure contracts or obtain written agreements

(2) Conduct financial monitoring of service providers

(3) Ensure independent audit of all employment and training programs

§ 679.430 How do entities performing multiple functions in a local area demonstrate

internal controls and prevent conflict of interest?

Local organizations often function simultaneously in a variety of roles, including local fiscal agent, Local Board staff, one-stop operator, and direct provider of career services or training services. Any organization that has been selected or otherwise designated to perform more than one of these functions must develop a written agreement with the Local Board and chief local elected official to clarify how the organization will carry out its responsibilities while demonstrating compliance with the Workforce Innovation and Opportunity Act and corresponding regulations, relevant Office of Management and Budget circulars, and the State's conflict of interest policy.

Subpart D—Regional and Local Plan

§ 679.500 What is the purpose of the regional and local plan?

(a) The local plan serves as 4-year action plan to develop, align, and integrate service delivery strategies and to support the State's vision and strategic and operational goals. The local plan sets forth the strategy to:

(1) Direct investments in economic, education, and workforce training programs to focus on providing relevant education and training to ensure that individuals, including youth and individuals with barriers to employment, have the skills to compete in the job market and that employers have a ready supply of skilled workers;

(2) Apply job-driven strategies in the one-stop system;

(3) Enable economic, education, and workforce partners to build a skilled workforce through innovation in, and alignment of, employment, training, and education programs; and

(4) Incorporate the local plan into the regional plan per 20 CFR 679.540.

(b) In the case of planning regions, a regional plan is required to meet the purposes described in paragraph (a) of this section and to coordinate resources among multiple boards in a region.

§ 679.510 What are the requirements for regional planning?

(a) Local Boards and chief elected officials within an identified planning region (as defined in WIOA secs. 106(a)(2)(B)-(C) and § 679.200 of this part) must:

(1) Participate in a regional planning process that results in:

(i) The preparation of a regional plan, as described in paragraph (a)(2) of this section and consistent with any guidance issued by the Department;

(ii) The establishment of regional service strategies, including use of cooperative service delivery agreements;

(iii) The development and implementation of sector initiatives for in-demand industry sectors or occupations for the planning region;

(iv) The collection and analysis of regional labor market data (in conjunction with the State) which must include the local planning requirements at § 679.560(a)(1)(i) and (ii);

(v) The coordination of administrative cost arrangements, including the pooling of funds for administrative costs, as appropriate;

(vi) The coordination of transportation and other supportive services as appropriate;

(vii) The coordination of services with regional economic development services and providers; and

(viii) The establishment of an agreement concerning how the planning region will collectively negotiate and reach agreement with the Governor on local levels of performance for, and report on, the performance accountability measures described in WIOA sec. 116(c) for local areas or

the planning region.

(2) Prepare, submit, and obtain approval of a single regional plan that:

(i) Includes a description of the activities described in paragraph (a)(1) of this section;

and

(ii) Incorporates local plans for each of the local areas in the planning region, consistent with § 679.540(a).

(b) Consistent with § 679.550(b), the Local Boards representing each local area in the planning region must provide an opportunity for public comment on the development of the regional plan or subsequent plan modifications before submitting the plan to the Governor. To provide adequate opportunity for public comment, the Local Boards must:

(1) Make copies of the proposed regional plan available to the public through electronic and other means, such as public hearings and local news media;

(2) Include an opportunity for comment by members of the public, including representatives of business, labor organizations, and education;

(3) Provide no more than a 30-day period for comment on the plan before its submission to the Governor, beginning on the date on which the proposed plan is made available; and

(4) The Local Boards must submit any comments that express disagreement with the

plan to the Governor along with the plan.

(5) Consistent with WIOA sec. 107(e), the Local Board must make information about the plan available to the public on a regular basis through electronic means and open meetings.

(c) The State must provide technical assistance and labor market data, as requested by local areas, to assist with regional planning and subsequent service delivery efforts.

(d) As they relate to regional areas and regional plans, the terms local area and local plan are defined in WIOA secs. 106(c)(3)(A)-(B).

§ 679.520 What are the requirements for approval of a regional plan?

Consistent with § 679.570, the Governor must review completed plans (including a modification to the plan). Such plans will be considered approved 90 days after submission unless the Governor determines in writing that:

(a) There are deficiencies in workforce investment activities that have been identified through audits and the local area has not made acceptable progress in implementing plans to address deficiencies; or

(b) The plan does not comply with applicable provisions of WIOA and the WIOA regulations, including the required consultations and public comment provisions, and the nondiscrimination requirements of 29 CFR part 37.

(c) The plan does not align with the State Plan, including with regard to the alignment of the core programs to support the strategy identified in the State Plan in accordance with WIOA sec. 102(b)(1)(E) and 20 CFR 676.105.

§ 679.530 When must the regional plan be modified?

(a)) Consistent with § 679.580, the Governor must establish procedures governing the modification of regional plans.

(b) At the end of the first 2-year period of the 4-year local plan, the Local Boards within a planning region, in partnership with the appropriate chief elected officials, must review the regional plan and prepare and submit modifications to the regional plan to reflect changes:

(1) In regional labor market and economic conditions; and

(2) Other factors affecting the implementation of the local plan, including but not limited to changes in the financing available to support WIOA title I and partner-provided WIOA services.

§ 679.540 How are local planning requirements reflected in a regional plan?

(a) The regional plan must address the requirements at WIOA secs. 106(c)(1)(A)-(H), and incorporate the local planning requirements identified for local plans at WIOA secs. 108(b)(1)-(22).

(b) The Governor may issue regional planning guidance that allows Local Boards and chief elected officials in a planning region to address any local plan requirements through the regional plan where there is a shared regional responsibility.

§ 679.550 What are the requirements for the development of the local plan?

(a) Under WIOA sec. 108, each Local Board must, in partnership with the appropriate chief elected officials, develop and submit a comprehensive 4-year plan to the Governor.

(1) The plan must identify and describe the policies, procedures, and local activities that are carried out in the local area, consistent with the State Plan.

(2) If the local area is part of a planning region, the Local Board must comply with WIOA sec. 106(c) and §§ 679.510 through 679.540 in the preparation and submission of a regional plan.

(b) Consistent with 679.510(b), the Local Board must provide an opportunity for public comment on the development of the local plan or subsequent plan modifications before submitting the plan to the Governor. To provide adequate opportunity for public comment, the Local Board must:

(1) Make copies of the proposed local plan available to the public through electronic and other means, such as public hearings and local news media;

(2) Include an opportunity for comment by members of the public, including representatives of business, labor organizations, and education;

(3) Provide no more than a 30-day period for comment on the plan before its submission to the Governor, beginning on the date on which the proposed plan is made available, prior to its submission to the Governor; and

(4) The Local Board must submit any comments that express disagreement with the plan to the Governor along with the plan.

(5) Consistent WIOA sec. 107(e), the Local Board must make information about the plan

available to the public on a regular basis through electronic means and open meetings.

§ 679.560 What are the contents of the local plan?

(a) The local workforce investment plan must describe strategic planning elements, including:

(1) A regional analysis of:

(i) Economic conditions including existing and emerging in-demand industry sectors and occupations; and

(ii) Employment needs of employers in existing and emerging in-demand industry sectors and occupations.

(iii) As appropriate, a local area may use an existing analysis, which is a timely current description of the regional economy, to meet the requirements of paragraphs (a)(1)(i) and (ii) of this section.

(2) Knowledge and skills needed to meet the employment needs of the employers in the region, including employment needs in in-demand industry sectors and occupations;

(3) An analysis of the regional workforce, including current labor force employment and unemployment data, information on labor market trends, and educational and skill levels of the workforce, including individuals with barriers to employment;

(4) An analysis of workforce development activities, including education and training, in the region. This analysis must include the strengths and weaknesses of workforce development activities and capacity to provide the workforce development activities to address the education and skill needs of the workforce, including individuals with barriers to employment, and the employment needs of employers;

(5) A description of the Local Board's strategic vision to support regional economic growth and economic self-sufficiency. This must include goals for preparing an educated and skilled workforce (including youth and individuals with barriers to employment), and goals relating to the performance accountability measures based on performance indicators described in 20 CFR 677.155(a)(1); and

(6) Taking into account analyses described in paragraphs (a)(1) through (4) of this section, a strategy to work with the entities that carry out the core programs and required partners to align resources available to the local area, to achieve the strategic vision and goals described in paragraph (a)(5) of this section;

(b) The plan must include a description of the following requirements at WIOA secs. 108(b)(2)-(21):

(1) The workforce development system in the local area that identifies:

(i) The programs that are included in the system; and

(ii) How the Local Board will support the strategy identified in the State Plan under 20 CFR 676.105 and work with the entities carrying out core programs and other workforce development programs, including programs of study authorized under the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 *et seq*.) to support service alignment.

(2) How the Local Board will work with entities carrying out core programs to:

(i) Expand access to employment, training, education, and supportive services for eligible individuals, particularly eligible individuals with barriers to employment;

(ii) Facilitate the development of career pathways and co-enrollment, as appropriate, in core programs; and

(iii) Improve access to activities leading to a recognized post-secondary credential (including a credential that is an industry-recognized certificate or certification, portable, and stackable);

(3) The strategies and services that will be used in the local area:

(i) To facilitate engagement of employers in workforce development programs, including small employers and employers in in-demand industry sectors and occupations;

(ii) To support a local workforce development system that meets the needs of businesses

in the local area;

(iii) To better coordinate workforce development programs and economic development;

(iv) To strengthen linkages between the one-stop delivery system and unemployment insurance programs; and

(v) That may include the implementation of initiatives such as incumbent worker training programs, on-the-job training programs, customized training programs, industry and sector strategies, career pathways initiatives, utilization of effective business intermediaries, and other business services and strategies designed to meet the needs of regional employers. These initiatives should support the strategy described in this paragraph (b)(3).

(4) An examination of how the Local Board will coordinate local workforce investment activities with regional economic development activities that are carried out in the local area and how the Local Board will promote entrepreneurial skills training and microenterprise services;

(5) The one-stop delivery system in the local area, including:

(i) How the Local Board will ensure the continuous improvement of eligible providers of services through the system and that such providers will meet the employment needs of local employers, workers, and jobseekers;

(ii) How the Local Board will facilitate access to services provided through the one-stop delivery system, including in remote areas, through the use of technology and other means;

(iii) How entities within the one-stop delivery system, including one-stop operators and the one-stop partners, will comply with WIOA sec. 188, if applicable, and applicable provisions of the

Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq*.) regarding the physical and programmatic accessibility of facilities, programs and services, technology, and materials for individuals with disabilities, including providing staff training and support for addressing the needs of individuals with disabilities; and

(iv) The roles and resource contributions of the one-stop partners;

(6) A description and assessment of the type and availability of adult and dislocated worker employment and training activities in the local area;

(7) A description of how the Local Board will coordinate workforce investment activities carried out in the local area with statewide rapid response activities;

(8) A description and assessment of the type and availability of youth workforce investment activities in the local area including activities for youth who are individuals with disabilities, which must include an identification of successful models of such activities;

(9) How the Local Board will coordinate relevant secondary and post-secondary education programs and activities with education and workforce investment activities to coordinate strategies, enhance services, and avoid duplication of services;

(10) How the Local Board will coordinate WIOA title I workforce investment activities with the provision of transportation and other appropriate supportive services in the local area;

(11) Plans, assurances, and strategies for maximizing coordination, improving service delivery, and avoiding duplication of Wagner-Peyser Act (29 U.S.C. 49 et seq.) services and other services provided through the one-stop delivery system;

(12) How the Local Board will coordinate WIOA title I workforce investment activities with adult education and literacy activities under WIOA title II. This description must include how the Local Board will carry out the review of local applications submitted under title II consistent with WIOA secs. 107(d)(11)(A) and (B)(i) and WIOA sec. 232;

(13) Copies of executed cooperative agreements which define how all local service providers, including additional providers, will carry out the requirements for integration of and access to the entire set of services available in the local one-stop system. This includes cooperative agreements (as defined in WIOA sec. 107(d)(11)) between the Local Board or other local entities described in WIOA sec. 101(a)(11)(B) of the Rehabilitation Act of 1973 (29 U.S.C. 721(a)(11)(B)) and the local office of a designated State agency or designated State unit administering programs carried out under title I of such Act (29 U.S.C. 720 et seq.) (other than sec. 112 or part C of that title (29 U.S.C. 732, 741) and subject to sec. 121(f)) in accordance with sec. 101(a)(11) of such Act (29 U.S.C. 721(a)(11)) with respect to efforts that will enhance the provision of services to individuals with disabilities and to other individuals, such as cross training of staff, technical assistance, use and sharing of information, cooperative efforts with employers, and other efforts at cooperation, collaboration, and coordination;

(14) An identification of the entity responsible for the disbursal of grant funds described in WIOA sec. 107(d)(12)(B)(i)(III), as determined by the chief elected official or the Governor under WIOA sec. 107(d)(12)(B)(i).

(15) The competitive process that will be used to award the subgrants and contracts for WIOA title I activities;

(16) The local levels of performance negotiated with the Governor and chief elected

official consistent with WIOA sec. 116(c), to be used to measure the performance of the local area and to be used by the Local Board for measuring the performance of the local fiscal agent (where appropriate), eligible providers under WIOA title I subtitle B, and the one-stop delivery system in the local area;

(17) The actions the Local Board will take toward becoming or remaining a high-performing board, consistent with the factors developed by the State Board (WIOA sec. 101(d)(6));

(18) How training services outlined in WIOA sec. 134 will be provided through the use of individual training accounts, including, if contracts for training services will be used, how the use of such contracts will be coordinated with the use of individual training accounts under that chapter, and how the Local Board will ensure informed customer choice in the selection of training programs regardless of how the training services are to be provided;

(19) The process used by the Local Board, consistent with WIOA 108(d), to provide a 30-day public comment period prior to submission of the plan, including an opportunity to have input into the development of the local plan, particularly for representatives of businesses, education, and labor organizations;

(20) How one-stop centers are implementing and transitioning to an integrated, technology-enabled intake and case management information system for programs carried out under WIOA and by one-stop partners; and

(21) The direction given by the Governor and the Local Board to the one-stop operator to ensure priority for adult career and training services will be given to recipients of public assistance, other low-income individuals, and individuals who are basic skills deficient consistent with WIOA

134(c)(3)(E) and § 680.600.

(c) The local plan must include any additional information required by the Governor.

(d) The local plan should identify the portions that the Governor has designated as appropriate for common response in the regional plan where there is a shared regional responsibility, as permitted by § 679.540(b).

(e)) Comments submitted during the public comment period that represent disagreement with the plan must be submitted with the local plan.

§ 679.570 What are the requirements for approval of a local plan?

(a)) Consistent with the requirements at § 679.520 the Governor must review completed plans (including a modification to the plan). Such plans will be considered approved 90 days after submission unless the Governor determines in writing that:

(1) There are deficiencies in workforce investment activities that have been identified through audits and the local area has not made acceptable progress in implementing plans to address deficiencies; or

(2) The plan does not comply with applicable provisions of WIOA and the WIOA regulations, including the required consultations and public comment provisions, and the nondiscrimination requirements of 29 CFR part 37.

(3) The plan does not align with the State Plan, including with regard to the alignment of the core programs to support the strategy identified in the State Plan in accordance with WIOA sec. 102(b)(1)(E) and 20 CFR 676.105.

(b) In cases where the State is a single local area:

(1) The State must incorporate the local plan into the State's Unified or Combined State Plan and submit it to the Department of Labor in accordance with the procedures described in 20 CFR 676.105.

(2) The Secretary of Labor performs the roles assigned to the Governor as they relate to local planning activities.

(3) The Secretary of Labor will issue planning guidance for such States.

§ 679.580 When must the local plan be modified?

(a)) Consistent with the requirements at § 679.530, the Governor must establish procedures governing the modification of local plans.

(b) At the end of the first 2-year period of the 4-year local plan, each Local Board, in partnership with the appropriate chief elected officials, must review the local plan and prepare and submit modifications to the local plan to reflect changes:

(1) In labor market and economic conditions; and

(2) Other factors affecting the implementation of the local plan, including but not limited

to:

(i) Significant changes in local economic conditions,

(ii) Changes in the financing available to support WIOA title I and partner-provided WIOA services;

(iii) Changes to the Local Board structure; and

(iv) The need to revise strategies to meet local performance goals.

Subpart E—Waivers/WorkFlex (Workforce Flexibility Plan)

§ 679.600 What is the purpose of the General Statutory and Regulatory Waiver Authority in the Workforce Innovation and Opportunity Act?

(a) The purpose of the general statutory and regulatory waiver authority provided at sec. 189(i)(3) of the WIOA is to provide flexibility to States and local areas and enhance their ability to improve the statewide workforce investment system to achieve the goals and purposes of WIOA.

(b) A waiver may be requested to address impediments to the implementation of a Unified or Combined State Plan, including the continuous improvement strategy, consistent with the purposes of title I of WIOA as identified in § 675.100.

§ 679.610 What provisions of the Workforce Innovation and Opportunity Act and the

Wagner-Peyser Act may be waived, and what provisions may not be waived?

(a) The Secretary may waive for a State, or local area in a State, any of the statutory or regulatory requirements of subtitles A, B and E of title I of WIOA, except for requirements relating to:

(1) Wage and labor standards;

(2) Non-displacement protections;

(3) Worker rights;

(4) Participation and protection of workers and participants;

(5) Grievance procedures and judicial review;

(6) Nondiscrimination;

(7) Allocation of funds to local areas;

(8) Eligibility of providers or participants;

(9) The establishment and functions of local areas and Local Boards;

(10) Procedures for review and approval of State and Local plans;

(11) The funding of infrastructure costs for one-stop centers; and

(12) Other requirements relating to the basic purposes of title I of WIOA described in § 675.100 of this chapter.

(b) The Secretary may waive for a State, or local area in a State, any of the statutory or regulatory requirements of secs. 8 through 10 of the Wagner- Peyser Act (29 U.S.C. 49g–49i) except for requirements relating to:

(1) The provision of services to unemployment insurance claimants and veterans; and

(2) Universal access to the basic labor exchange services without cost to job seekers.

§ 679.620 Under what conditions may a Governor request, and the Secretary approve, a general waiver of statutory or regulatory requirements under the Workforce Innovation and Opportunity Act?

(a) The Secretary will issue guidelines under which the States may request general

waivers of WIOA and Wagner-Peyser requirements.

(b) A Governor may request a general waiver in consultation with appropriate chief elected officials:

(1) By submitting a waiver plan which may accompany the State's WIOA 4-year Unified or Combined State Plan or 2-year modification; or

(2) After a State's WIOA Plan is approved, by separately submitting a waiver plan.

(c)) A Governor's waiver request may seek waivers for the entire State or for one or more local areas within the State.

(d) A Governor requesting a general waiver must submit to the Secretary a plan to improve the statewide workforce investment system that:

(1) Identifies the statutory or regulatory requirements for which a waiver is requested and the goals that the State or local area, as appropriate, intends to achieve as a result of the waiver and how those goals relate to the Unified or Combined State Plan;

(2) Describes the actions that the State or local area, as appropriate, has undertaken to remove State or local statutory or regulatory barriers;

(3) Describes the goals of the waiver and the expected programmatic outcomes if the request is granted;

(4) Describes how the waiver will align with the Department's policy priorities, such as:

(i) Supporting employer engagement;

(ii) Connecting education and training strategies;

(iii) Supporting work-based learning;

(iv) Improving job and career results, and

(v) Other priorities as articulated in forthcoming guidance.

(5) Describes the individuals affected by the waiver, including how the waiver will impact services for disadvantaged populations or individuals with multiple barriers to employment; and

(6) Describes the processes used to:

(i) Monitor the progress in implementing the waiver;

(ii) Provide notice to any Local Board affected by the waiver;

(iii) Provide any Local Board affected by the waiver an opportunity to comment on the request;

(iv) Ensure meaningful public comment, including comment by business and organized labor, on the waiver; and

(v) Collect and report information about waiver outcomes in the State's WIOA Annual

Report.

(7) The Secretary may require that States provide the most recent data available about the outcomes of the existing waiver in cases where the State seeks renewal of a previously approved waiver.

(e) The Secretary will issue a decision on a waiver request within 90 days after the receipt of the original waiver request.

(f) The Secretary will approve a waiver request if and only to the extent that:

(1) The Secretary determines that the requirements for which a waiver is requested impede the ability of either the State or local area to implement the State's Plan to improve the statewide workforce investment system;

(2) The Secretary determines that the waiver plan meets all of the requirements of WIOA sec. 189(i)(3) and §§ 679.600 through 679.620; and

(3) The State has executed a memorandum of understanding (MOU) with the Secretary

requiring the State to meet, or ensure that the local area meets, agreed-upon outcomes and to implement other appropriate measures to ensure accountability.

(g) A waiver may be approved for as long as the Secretary determines appropriate, but for not longer than the duration of the State's existing Unified or Combined State Plan.

(h) The Secretary may revoke a waiver granted under this section if the Secretary determines that the State has failed to meet the agreed upon outcomes, measures, failed to comply with the terms and conditions in the MOU described in paragraph (f) of this section or any other document establishing the terms and conditions of the waiver, or if the waiver no longer meets the requirements of §§ 679.600 through 679.620.

§ 679.630 Under what conditions may the Governor submit a Workforce Flexibility Plan?

(a)) A State may submit to the Secretary, and the Secretary may approve, a workforce flexibility (workflex) plan under which the State is authorized to waive, in accordance with the plan:

(1) Any of the statutory or regulatory requirements under title I of WIOA applicable to local areas, if the local area requests the waiver in a waiver application, except for:

(i) Requirements relating to the basic purposes of title I of WIOA described in § 675.100

of this chapter;

(ii) Wage and labor standards;

(iii) Grievance procedures and judicial review;

(iv) Nondiscrimination;

(v) Eligibility of participants;

(vi) Allocation of funds to local areas;

(vii) Establishment and functions of local areas and Local Boards;

(viii) Procedures for review and approval of local plans; and

(ix) rker rights, participation, and protection.

(2) Any of the statutory or regulatory requirements applicable to the State under secs. 8 through 10 of the Wagner-Peyser Act (29 U.S.C. 49g-49i), except for requirements relating to:

(i) The provision of services to unemployment insurance claimants and veterans; and

(ii) Universal access to basic labor exchange services without cost to job seekers.

(3) Any of the statutory or regulatory requirements applicable under the Older Americans Act of 1965 (OAA) (42 U.S.C. 3001 et seq.), to State agencies on aging with respect to activities carried out using funds allotted under OAA sec. 506(b) (42 U.S.C. 3056d(b)), except for requirements relating to:

(i) The basic purposes of OAA;

(ii) Wage and labor standards;

(iii) Eligibility of participants in the activities; and

(iv) Standards for grant agreements.

(b) A workforce flexibility plan submitted under paragraph (a) of this section must include descriptions of:

(1) The process by which local areas in the State may submit and obtain State approval of applications for waivers of requirements under title I of WIOA;

(2) A description of the criteria the State will use to approve local area waiver requests and how such requests support implementation of the goals identified State Plan;

(3) The statutory and regulatory requirements of title I of WIOA that are likely to be waived by the State under the workforce flexibility plan;

(4) The statutory and regulatory requirements of secs. 8 through 10 of the Wagner-Peyser Act that are proposed for waiver, if any;

(5) The statutory and regulatory requirements of the Older Americans Act of 1965 that are proposed for waiver, if any;

(6) The outcomes to be achieved by the waivers described in paragraphs (b)(1) to (b)(5) of this section including, where appropriate, revisions to adjusted levels of performance included in the State or local plan under title I of WIOA, and a description of the data or other information the State will use to track and assess outcomes; and

(7) The measures to be taken to ensure appropriate accountability for Federal funds in connection with the waivers.

(c)) A State's workforce flexibility plan may accompany the State's Unified or Combined State Plan, 2-year modification, or may be submitted separately as a modification to that plan.

(d) The Secretary may approve a workforce flexibility plan consistent with the period of approval of the State's Unified or Combined State Plan, and not for more than 5 years.

(e) Before submitting a workforce flexibility plan to the Secretary for approval, the State must provide adequate notice and a reasonable opportunity for comment on the proposed waiver requests under the workforce flexibility plan to all interested parties and to the general public.

(f) The Secretary will issue guidelines under which States may request designation as a work-flex State. These guidelines may require a State to implement an evaluation of the impact of work-flex in the State.

§ 679.640 What limitations apply to the State's Workforce Flexibility Plan authority under

the Workforce Innovation and Opportunity Act?

(a)(1) Under work-flex waiver authority a State must not waive the WIOA, Wagner-Peyser or Older Americans Act requirements which are excepted from the work-flex waiver authority and described in § 679.630(a).

(2) Requests to waive statutory and regulatory requirements of title I of WIOA applicable at the State level may not be granted under work-flex waiver authority granted to a State. Such requests may only be granted by the Secretary under the general waiver authority described at §§ 679.610 through 679.620.

(b) As required in § 679.630(b)(6), States must address the outcomes to result from

work-flex waivers as part of its workforce flexibility plan. The Secretary may terminate a State's work-flex designation if the State fails to meet agreed-upon outcomes or other terms and conditions contained in its workforce flexibility plan.

7. Add part 680 to read as follows:

PART 680 – ADULT AND DISLOCATED WORKER ACTIVITIES UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

Subpart A—Delivery of Adult and Dislocated Worker Activities Under Title I of the Workforce Innovation and Opportunity Act

Sec.

680.100 What is the role of the adult and dislocated worker programs in the one-stop delivery system?

680.110 When must adults and dislocated workers be registered and considered a participant?

680.120 What are the eligibility criteria for career services for adults in the adult and dislocated worker programs?

680.130 What are the eligibility criteria for career services for dislocated workers in the adult and dislocated worker programs?

680.140 What Workforce Innovation and Opportunity Act title I adult and dislocated

worker services are Local Boards required and permitted to provide?

680.150 What career services must be provided to adults and dislocated workers?

680.160 How are career services delivered?

680.170 What is an internship or work experience for adults and dislocated workers?

680.180 What is the individual employment plan?

Subpart B—Training Services

Sec.

680.200 What are training services for adults and dislocated workers?

680.210 Who may receive training services?

680.220 Are there particular career services an individual must receive before receiving training services under Workforce Innovation and Opportunity Act?

680.230 What are the requirements for coordination of Workforce Innovation and Opportunity Act training funds and other grant assistance?

Subpart C—Individual Training Accounts

Sec.

680.300 How are training services provided?

680.310 Can the duration and amount of Individual Training Accounts be limited?

680.320 Under what circumstances may mechanisms other than Individual Training Accounts be used to provide training services?

680.330 How can Individual Training Accounts, supportive services, and needs-related payments be used to support placing participating adults and dislocated workers into a registered apprenticeship program and support participants once they are in a registered apprenticeship program?

680.340 What are the requirements for consumer choice?

Subpart D—Eligible Training Providers

Sec.

680.400 What is the purpose of this subpart?

680.410 What entities are eligible providers of training services?

680.420 What is a “program of training services”?

680.430 Who is responsible for managing the eligible provider process?

680.440 What are the transition procedures for Workforce Investment Act-eligible providers to become eligible under the Workforce Innovation and Opportunity Act?

680.450 What is the initial eligibility procedure for new providers?

680.460 What is the application procedure for continued eligibility?

680.470 What is the procedure for registered apprenticeship programs that seek to be included in a State's eligible training provider list?

680.480 May an eligible training provider lose its eligibility?

680.490 What kind of performance and cost information must eligible training providers provide for each program of training?

680.500 How is the State list of eligible training providers disseminated?

680.510 In what ways can a Local Board supplement the information available from the State list?

680.520 May individuals choose training providers located outside of the local area?

680.530 What requirements apply to providers of on-the-job-training, customized training, incumbent worker training, and other training exceptions?

Subpart E—Priority and Special Populations

680.600 What priority must be given to low-income adults and public assistance recipients and individuals who are basic skills deficient served with adult funds under title I?

680.610 Does the statutory priority for use of adult funds also apply to dislocated worker funds?

680.620 How does the Temporary Assistance for Needy Families program relate to the one-stop delivery system?

680.630 How does a displaced homemaker qualify for services under title I?

680.640 May an individual with a disability whose family does not meet income eligibility criteria under the Act be eligible for priority as a low-income adult?

680.650 Do veterans receive priority of service under the Workforce Innovation and Opportunity Act?

680.660 Are separating military service members eligible for dislocated worker activities under the Workforce Innovation and Opportunity Act?

Subpart F—Work-Based Training

680.700 What are the requirements for on-the-job training?

680.710 What are the requirements for on-the-job training contracts for employed workers?

680.720 What conditions govern on-the-job training payments to employers? 680.730 Under what conditions may a Governor or Local Board raise the on-the-job training reimbursement rate up to 75 percent of the wage rate?

680.740 How can on-the-job training funds be used to support placing participants into a registered apprenticeship program?

680.750 Can Individual Training Account and on-the-job training funds be combined to support placing participants into a registered apprenticeship program?

680.760 What is customized training?

680.770 What are the requirements for customized training for employed workers?

680.780 Who is an "incumbent worker" for purposes of statewide and local employment and training activities?

680.790 What is incumbent worker training?

680.800 What funds may be used for incumbent worker training?

680.810 What criteria must be taken into account for an employer to be eligible to receive local incumbent worker funds?

680.820 Are there cost sharing requirements for local area incumbent worker training?

680.830 What is a transitional job?

680.840 What funds may be used for transitional jobs?

680.850 May funds provided to employers for work-based training be used to assist, promote, or deter union organizing?

Subpart G—Supportive Services

680.900 What are supportive services for adults and dislocated workers?

680.910 When may supportive services be provided to participants?

680.920 Are there limits on the amounts or duration of funds for supportive services?

680.930 What are needs-related payments?

680.940 What are the eligibility requirements for adults to receive needs-related payments?

680.950 What are the eligibility requirements for dislocated workers to receive needs-related payments?

680.960 May needs-related payments be paid while a participant is waiting to start training classes?

680.970 How is the level of needs-related payments determined?

Authority: Secs. 122, 134, 189, 503, Pub. L. 113-128, 128 Stat. 1425 (Jul. 22, 2014).

Subpart A—Delivery of Adult and Dislocated Worker Activities Under Title I of the Workforce Innovation and Opportunity Act

§ 680.100 What is the role of the adult and dislocated worker programs in the one-stop delivery system?

(a) The one-stop system is the basic delivery system for adult and dislocated worker services. Through this system, adults and dislocated workers can access a continuum of services. The services are classified as career and training services.

(b) The chief elected official or his/her designee(s), as the local grant recipient(s) for the adult and dislocated worker programs, is a required one-stop partner and is subject to the provisions relating to such partners described in part 678 of this chapter. Consistent with those provisions:

(1) Career services for adults and dislocated workers must be made available in at least one comprehensive one-stop center in each local workforce investment area. Services may also be available elsewhere, either at affiliated sites or at specialized centers. For example, specialized centers may be established to serve workers being dislocated from a particular employer or industry, or to serve residents of public housing.

(2) Through the one-stop system, adults and dislocated workers needing training are provided Individual Training Accounts (ITAs) and access to lists of eligible providers and programs of training. These lists contain quality consumer information, including cost and performance information for each of the providers' programs, so that participants can make informed choices on where to use their ITAs. (ITAs are more fully discussed in subpart C of this part.)

§ 680.110 When must adults and dislocated workers be registered and considered a

participant?

(a)) Registration is the process for collecting information to support a determination of

eligibility. This information may be collected through methods that include electronic data transfer, personal interview, or an individual's application. Participation occurs after the registration process of collecting information to support an eligibility determination and begins when the individual receives a staff-assisted WIOA service, which does not include self-service

or informational activities.

(b) Adults and dislocated workers who receive services funded under title I other than self-service or informational activities must be registered and must be a participant.

(c) Employment Opportunity data must be collected on every individual who is interested in being considered for WIOA title I financially assisted aid, benefits, services, or training by a recipient, and who has signified that interest by submitting personal information in response to a request from the grant recipient or designated service provider.

§ 680.120 What are the eligibility criteria for career services for adults in the adult and

dislocated worker programs?

To be eligible to receive career services as an adult in the adult and dislocated worker programs, an individual must be 18 years of age or older. To be eligible for any dislocated worker programs, an eligible adult must meet the criteria of § 680.130. Eligibility criteria for training services are found at § 680.210.

§ 680.130 What are the eligibility criteria for career services for dislocated workers in the

adult and dislocated worker programs?

(a) To be eligible to receive career services as a dislocated worker in the adult and dislocated worker programs, an individual must meet the definition of "dislocated worker" at WIOA sec. 3(15). Eligibility criteria for training services are found at § 680.210.

(b) Governors and Local Boards may establish policies and procedures for one-stop operators to use in determining an individual's eligibility as a dislocated worker, consistent with the definition at WIOA sec. 3(15). These policies and procedures may address such conditions as:

(1) What constitutes a "general announcement" of plant closing under WIOA sec.

3(15)(B)(ii) or (iii); and

(2) What constitutes "unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disasters" for determining the eligibility of self-employed individuals, including family members and farm workers or ranch hands, under WIOA sec. 3(15)(C).

§ 680.140 What Workforce Innovation and Opportunity Act title I adult and dislocated

worker services are Local Boards required and permitted to provide?

(a) WIOA title I formula funds allocated to local areas for adults and dislocated workers must be used to provide career and training services through the one-stop delivery system. Local Boards determine the most appropriate mix of these services, but both types must be available for eligible adults and dislocated workers. Different eligibility criteria apply for each type of services. See §§ 680.120, 680.130, and 680.210.

(b) WIOA title I funds may also be used to provide the additional services described in WIOA sec. 134(d), including:

(1) Job seeker services:

(i) Customer support to enable individuals with barriers to employment (including individuals with disabilities) and veterans, to navigate among multiple services and activities (WIOA sec. 134(d)(1)(A)(iv));

(ii) Training programs for displaced homemakers and for individuals training for nontraditional occupations (as defined in WIOA sec. 3(37) as occupations or fields of work in which individuals of one gender comprise less than 25 percent of the individuals so employed), in conjunction with programs operated in the local area (WIOA sec. 134(d)(1)(A)(viii));

(iii) Work support activities for low-wage workers, in coordination with one-stop partners, which will provide opportunities for these workers to retain or enhance employment. These activities may include any activities available under the WIOA adult and dislocated worker programs in coordination with activities and resources available through partner programs. These activities may be provided in a manner that enhances the worker's ability to participate, for example by providing them at nontraditional hours or providing on-site child care (WIOA sec. 134(d)(1)(B));

(iv) Supportive services, including needs-related payments, as described in subpart G of this part (WIOA secs. 134(d)(2) and (3)); and

(v) Providing transitional jobs, as described in § 680.830, to individuals with barriers to employment who are chronically unemployed or have an inconsistent work history (WIOA sec. 134(d)(5)).

(2) Employer services:

(i) Customized screening and referral of qualified participants in training services to employers (WIOA sec. 134(d)(1)(A)(i));

(ii) Customized employment-related services to employers, employer associations, or other such organization on a fee-for-service basis that are in addition to labor exchange services available to employers under the Wagner-Peyser Act (WIOA sec. 134(d)(1)(A)(ii));

(iii) Activities to provide business services and strategies that meet the workforce investment needs of area employers, as determined by the Local Board and consistent with the local plan (see § 678.435 and WIOA sec. 134(d)(1)(A)(ix)); and

(3) Coordination activities:

(i) Employment and training activities in coordination with child support enforcement activities, as well as child support services and assistance activities, of the State and local agencies carrying out part D of title IV of the Social Security Act (42 U.S.C. 651 et seq.) (WIOA secs. 134(d)(1)(A)(vi)(I)-(II));

(ii) Employment and training activities in coordination with cooperative extension programs carried out by the Department of Agriculture (WIOA sec. 134(d)(1)(A)(vi)(III));

(iii) Employment and training activities in coordination with activities to facilitate remote access to services provided through a one-stop delivery system, including facilitating access through the use of technology (WIOA sec. 134(d)(1)(A)(vi)(IV));

(iv) Improving coordination between workforce investment activities and economic development activities carried out within the local area involved, and to promote entrepreneurial skills training and microenterprise services (WIOA sec. 134(d)(1)(A)(vii)(I));

(v) Improving services and linkages between the local workforce investment system (including the local one-stop delivery system) and employers, including small employers, in the local area (WIOA sec. 134(d)(1)(A)(vii)(II));

(vi) Strengthening linkages between the one-stop delivery system and the unemployment insurance programs (WIOA sec. 134(d)(1)(A)(vii)(III)); and

(vii) Improving coordination between employment and training activities and programs carried out in the local area for individuals with disabilities, including programs carried out by State agencies relating to intellectual disabilities and developmental disabilities, activities carried out by Statewide Independent Living Councils established under sec. 705 of the Rehabilitation Act of 1973 (29 U.S.C. 796d), programs funded under part B of chapter 1 of title VII of such Act

(29 U.S.C. 796e et seq.), and activities carried out by centers for independent living, as defined in sec. 702 of such Act (29 U.S.C. 796a) (WIOA sec. 134(d)(1)(A)(xi)).

(4) Implementing a pay-for-performance contract strategy for training services in accordance with §§ 683.500 through 683.530 for which up to 10 percent of the Local Board's total adult and dislocated worker funds may be used (WIOA sec. 134(d)(1)(A)(iii)).

(5) Technical assistance for one-stop operators, partners, and eligible training providers on the provision of service to individuals with disabilities in local areas, including staff training and development, provision of outreach and intake assessments, service delivery, service coordination across providers and programs, and development of performance accountability measures (WIOA sec. 134(d)(1)(A)(v)).

(6) Activities to adjust the economic self-sufficiency standards referred to in WIOA sec. 134(a)(3)(A)(xii) for local factors or activities to adopt, calculate or commission for approval, economic self-sufficiency standards for the local areas that specify the income needs of families, by family size, the number and ages of children in the family, and sub-State geographical considerations (WIOA sec. 134(d)(1)(A)(x)).

(7) Implementing promising service to workers and businesses, which may include support for education, training, skill upgrading, and statewide networking for employees to become workplace learning advisors and maintain proficiency in carrying out the activities associated with such advising (WIOA sec. 134(d)(1)(A)(xii)).

(8) Incumbent worker training programs, as described in subpart F of this part (WIOA sec. 134(d)(4)).

§ 680.150 What career services must be provided to adults and dislocated workers?

(a) At a minimum, all of the career services described in WIOA secs. 134(c)(2)(A)(i)-(xi) and § 678.430(a) must be provided in each local area through the one-stop delivery system.

(b) Individualized career services described in WIOA sec. 134(c)(2)(A)(xii) and § 678.430(b) must be made available, if determined appropriate in order for an individual to obtain or retain employment.

(c) Follow-up services, as described in WIOA sec. 134(c)(2)(A)(xiii) and § 678.430(c), must be made available, as appropriate, for a minimum of 12 months following the first day of employment, to registered participants who are placed in unsubsidized employment.

§ 680.160 How are career services delivered?

Career services must be provided through the one-stop delivery system. Career services may be provided directly by the one-stop operator or through contracts with service providers that are approved by the Local Board. The Local Board may only be a provider of career services when approved by the chief elected official and the Governor in accordance with the requirements of WIOA sec. 107(g)(2) and § 679.410.

§ 680.170 What is an internship or work experience for adults and dislocated workers?

For the purposes of WIOA sec. 134(c)(2)(A)(xii)(VII), internships or work experiences are a planned, structured learning experience that takes place in a workplace for a limited period of time. Work experience may be paid or unpaid, as appropriate. An internship or work experience may be arranged within the private for profit sector, the non-profit sector, or the public sector. Labor standards apply in any work experience setting where an employee/employer relationship, as defined by the Fair Labor Standards Act, exists.

§ 680.180 What is the individual employment plan?

The individual employment plan is an individualized career service, under WIOA sec.

134(c)(2)(A)(xii)(II), that is jointly developed by the participant and case manager when determined appropriate by the one-stop operator or one-stop partner. The plan is an ongoing strategy to identify employment goals, achievement objectives, and an appropriate combination of services for the participant to achieve the employment goals.

Subpart B—Training Services

§ 680.200 What are training services for adults and dislocated workers?

Training services are listed in WIOA sec. 134(c)(3)(D). The list in the Act is not all-inclusive and additional training services may be provided.

§ 680.210 Who may receive training services?

Under WIOA sec. 134(c)(3)(A) training services may be made available to employed and unemployed adults and dislocated workers who:

(a)) A one-stop operator or one-stop partner determines, after an interview, evaluation, or assessment, and career planning, are:

(1) Unlikely or unable to obtain or retain employment that leads to economic self-sufficiency or wages comparable to or higher than wages from previous employment through career services;

(2) In need of training services to obtain or retain employment leading to economic self-sufficiency or wages comparable to or higher than wages from previous employment; and

(3) Have the skills and qualifications to participate successfully in training services;

(b) Have selected a program of training services that is directly linked to the employment opportunities in the local area or the planning region, or in another area to which the individuals are willing to commute or relocate;

(c)) Are unable to obtain grant assistance from other sources to pay the costs of such training, including such sources as State-funded training funds, Trade Adjustment Assistance, and Federal Pell Grants established under title IV of the Higher Education Act of 1965, or require

WIOA assistance in addition to other sources of grant assistance, including Federal Pell Grants (provisions relating to fund coordination are found at § 680.230 and WIOA sec. 134(c)(3)(B)); and

(d) If training services are provided through the adult funding stream, are determined eligible in accordance with the State and local priority system, if any, in effect for adults under WIOA sec. 134(c)(3)(E) and § 680.600.

§ 680.220 Are there particular career services an individual must receive before receiving

training services under Workforce Innovation and Opportunity Act?

(a)) Yes, an individual must at a minimum receive either an interview, evaluation, or assessment, and career planning or any other method through which the one-stop operator or partner can obtain enough information to make an eligibility determination to be determined eligible for training services see WIOA sec. 134(c)(3)(A)(i). Where appropriate, a recent interview, evaluation, or assessment, may be used for the assessment purpose; see WIOA sec. 134(c)(3)(A)(ii); and

(b) The case file must contain a determination of need for training services under § 680.210 as determined through the interview, evaluation, or assessment, and career planning informed by local labor market information and training provider performance information, or

through any other career service received. There is no requirement that career services be provided as a condition to receipt of training services; however, if career services are not provided before

training, the Local Board must document the circumstances that justified its determination to provide training without first providing the services described in paragraph (a) of this section.

(c) There is no Federally-required minimum time period for participation in career services before receiving training services.

§ 680.230 What are the requirements for coordination of Workforce Innovation and

Opportunity Act training funds and other grant assistance?

(a) WIOA funding for training is limited to participants who:

(1) Are unable to obtain grant assistance from other sources to pay the costs of their training; or

(2) Require assistance beyond that available under grant assistance from other sources to pay the costs of such training. Program operators and training providers must coordinate funds available to pay for training as described in paragraphs (b) and (c) of this section. In making the determination under this paragraph, one-stop operators should take into account the full cost of participating in training services, including the cost of support services and other appropriate costs.

(b) One-stop operators must coordinate training funds available and make funding arrangements with one-stop partners and other entities to apply the provisions of paragraph (a) of this section. One-stop operators must consider the availability of other sources of grants to pay for

training costs such as Temporary Assistance for Needy Families (TANF), State-funded training funds, and Federal Pell Grants, so that WIOA funds supplement other sources of training grants.

(c) A WIOA participant may enroll in WIOA-funded training while his/her application for a Pell Grant is pending as long as the one-stop operator has made arrangements with the training provider and the WIOA participant regarding allocation of the Pell Grant, if it is subsequently awarded. In that case, the training provider must reimburse the one-stop operator the WIOA funds used to underwrite the training for the amount the Pell Grant covers. Reimbursement is not required from the portion of Pell Grant assistance disbursed to the WIOA participant for education-related expenses. (WIOA sec. 134(c)(3)(B))

Subpart C—Individual Training Accounts

§ 680.300 How are training services provided?

Training service for eligible individuals are typically provided by training providers who receive payment for their services through an Individual Training Account (ITA). The ITA is a payment agreement established on behalf of a participant with a training provider. WIOA title I adult and dislocated workers purchase training services from eligible providers they select in consultation with the case manager, which includes discussion of quality and performance

information on the available training providers. Payments from ITAs may be made in a variety of ways, including the electronic transfer of funds through financial institutions, vouchers, or other appropriate methods. Payments may also be made incrementally, e.g., through payment of a portion of the costs at different points in the training course. (WIOA sec. 134(c)(4)(G)) Under limited conditions, as provided in § 680.320 and WIOA sec. 134(d)(3)(G), a Local Board may contract for these services, rather than using an ITA for this purpose. In some limited circumstances, the Local Board may itself provide the training services, but only if it obtains a waiver from the Governor for this purpose, and the Local Board meets the other requirements of § 679.410 and WIOA sec. 107(g)(1).

§ 680.310 Can the duration and amount of Individual Training Accounts be limited?

(a) Yes, the State or Local Board may impose limits on ITAs, such as limitations on the dollar amount and/or duration.

(b) Limits to ITAs may be established in different ways:

(1) There may be a limit for an individual participant that is based on the needs identified in the individual employment plan, such as the participant's occupational choice or goal and the level of training needed to succeed in that goal; or

(2) There may be a policy decision by the State Board or Local Board to establish a range of amounts and/or a maximum amount applicable to all ITAs.

(c) Limitations established by State or Local Board policies must be described in the State or Local Plan, respectively, but must not be implemented in a manner that undermines the Act's requirement that training services are provided in a manner that maximizes customer choice in the selection of an eligible training provider. ITA limitations may provide for exceptions to the limitations in individual cases.

(d) An individual may select training that costs more than the maximum amount available for ITAs under a State or local policy when other sources of funds are available to supplement the ITA. These other sources may include: Pell Grants; scholarships; severance pay; and other sources.

§ 680.320 Under what circumstances may mechanisms other than Individual Training

Accounts be used to provide training services?

(a)) Contracts for services may be used instead of ITAs only when one or more of the following five exceptions apply:

(1) When the services provided are on-the-job training (OJT), customized training, incumbent worker training or transitional jobs;

(2) When the Local Board determines that there are an insufficient number of eligible providers in the local area to accomplish the purpose of a system of ITAs. The Local Plan must

describe the process to be used in selecting the providers under a contract for services. This process must include a public comment period for interested providers of at least 30 days;

(3) When the Local Board determines that there is a training services program of demonstrated effectiveness offered in the area by a community-based organization (CBO) or another private organization to serve individuals with barriers to employment, as described in paragraph (b) of this section. The Local Board must develop criteria to be used in determining demonstrated effectiveness, particularly as it applies to the individuals with barriers to employment to be served. The criteria may include:

(i) Financial stability of the organization;

(ii) Demonstrated performance in the delivery of services to hard to serve participant populations through such means as program completion rate; attainment of the skills, certificates or degrees the program is designed to provide; placement after training in unsubsidized employment; and retention in employment; and

(iii) How the specific program relates to the workforce investment needs identified in the local plan.

(4) When the Local Board determines that it would be most appropriate to contract with

an institution of higher education or other eligible provider of training services will facilitate the

training of multiple individuals in in-demand industry sectors or occupations, provided that the contract does not limit consumer choice.

(5) When the Local Board is considering entering into a pay-for-performance contract, the Local Board ensures that the contract is consistent with § 683.510.

(b) Under paragraph (a)(3) of this section, individuals with barriers to employment include those individuals in one or more of the following categories, as prescribed by WIOA sec. 3(24):

(1) Displaced homemakers;

(2) Low-income individuals;

(3) Indians, Alaska Natives, and Native Hawaiians;

(4) Individuals with disabilities;

(5) Older individuals, i.e., those aged 55 or over;

(6) Ex-offenders;

(7) Homeless individuals;

(8) Youth who are in or have aged out of the foster care system;

(9) Individuals who are English language learners, individuals who have low levels of literacy, and individuals facing substantial cultural barriers;

(10) Eligible migrant and seasonal farmworkers, defined in WIOA sec. 167(i);

(11) Individuals within 2 years of exhausting lifetime eligibility under TANF (part A of title IV of the Social Security Act);

(12) Single-parents (including single pregnant women);

(13) Long-term unemployed individuals;

(14) Other groups determined by the Governor to have barriers to employment.

§ 680.330 How can Individual Training Accounts, supportive services, and needs-related

payments be used to support placing participating adults and dislocated workers into a

registered apprenticeship program and support participants once they are in a registered

apprenticeship program?

Registered apprenticeships automatically qualify to be a on a State's eligible training provider list (ETPL) as described in § 680.470. ITAs can be used to support participants in:

(a)) Pre-apprenticeship training, as defined in § 681.480;

(b) Training tuition for a registered apprenticeship program to the training provider;

(c)) Supportive services may be provided as described in §§ 680.900 and 680.910; and

(d) Needs-related payments may be provided as described in §§ 680.930, 680.940, 680.950, 680.960, and 680.970;

(e) Work-based training options may also be used to support participants in registered apprenticeship programs (see §§ 680.740 and 680.750).

§ 680.340 What are the requirements for consumer choice?

(a) Training services, whether under ITA's or under contract, must be provided in a manner that maximizes informed consumer choice in selecting an eligible provider.

(b) Each Local Board, through the one-stop center, must make available to customers the State list of eligible providers required in WIOA sec. 122(e). The list includes a description of the programs through which the providers may offer the training services, the information identifying eligible providers of on-the-job training and customized training required under WIOA sec. 122(h) (where applicable), and the performance and cost information about eligible providers of training services described in WIOA secs. 122(d) and 122(h).

(c) An individual who has been determined eligible for training services under § 680.210 may select a provider described in paragraph (b) of this section after consultation with a career planner. Unless the program has exhausted training funds for the program year, the operator must refer the individual to the selected provider, and establish an ITA for the individual to pay for training. For purposes of this paragraph, a referral may be carried out by providing a voucher or certificate to the individual to obtain the training.

(d) The cost of referral of an individual with an ITA to a training provider is paid by the applicable adult or dislocated worker program under title I of WIOA.

(e) Each Local Board, through the one-stop center, may coordinate funding for ITAs with funding from other Federal, State, local, or private job training programs or sources to assist the individual in obtaining training services.

(f)) Consistent with paragraph (a) of this section, priority consideration must be given to programs that lead to recognized post-secondary credentials that are aligned with in-demand industry sectors or occupations in the local area.

Subpart D—Eligible Training Providers

§ 680.400 What is the purpose of this subpart?

(a) This subpart describes the process for determining eligible training providers for WIOA title I-B adult and dislocated worker training participants and for publicly disseminating the list of these providers with relevant information about their programs. The workforce development system established under WIOA emphasizes informed consumer choice, job-driven training, provider performance, and continuous improvement. The quality and selection of providers and programs of training services is vital to achieving these core principles.

(b) The State eligible training provider list and the related eligibility procedures ensure the accountability, quality and labor-market relevance of programs of training services that receive funds through WIOA title I-B. The State list is also a means for ensuring informed customer choice for individuals eligible for training. In administering the eligible training provider process, States and local areas must work to ensure that qualified providers offering a wide variety of job-driven training programs are available. The State list is made publicly available online through Web sites and searchable databases as well as any other means the State uses to disseminate information to consumers. The list must be accompanied by relevant performance and cost information and must be presented in a way that is easily understood, in order to maximize informed consumer choice and serve all significant population groups, and must also be available in an electronic format. The State eligible training provider performance reports, as required under WIOA sec. 116(d)(4), are addressed separately in § 677.230.

§ 680.410 What entities are eligible providers of training services?

(a) Eligible providers of training services are entities that are eligible to receive WIOA title I-B funds, according to criteria and procedures established by the Governor in accordance with WIOA sec. 122(b) for adult and dislocated worker participants who enroll in training services. Potential providers may include:

(1) Institutions of higher education that provide a program which leads to a recognized post-secondary credential;

(2) Entities that carry out programs registered under the National Apprenticeship Act (29 U.S.C. 50 et seq.);

(3) Other public or private providers of a program of training services, which may include joint labor-management organizations and eligible providers of adult education and literacy activities under title II if such activities are provided in combination with occupational skills training; and

(4) Local Boards, if they meet the conditions of WIOA sec. 107(g)(1).

(b) In order to provide training services, a provider must meet the requirements of this part and WIOA sec. 122.

(1) The requirements of this part apply to the use of WIOA title I-B adult and dislocated

worker funds to provide training:

(i) To individuals using individual training accounts to access training through the eligible training provider list; and

(ii) To individuals for training provided through the exceptions to individual training accounts described at §§ 680.320 and 680.530. Training services under WIOA title I-B may be provided through a contract for services rather than Individual Training Accounts under conditions identified in WIOA sec. 134(c)(3)(G). These exceptions include: on-the-job training, customized training, incumbent worker training or transitional employment; instances where the Local Board determines there are insufficient number of eligible providers of training services in the local area; where the Local Board determines an exception is necessary to meet the needs of individuals with barriers to employment (including assisting individuals with disabilities or adults in need of adult education and literacy services); where the Local Board determines that it would be most appropriate to award a contract to an institution of higher education or other eligible provider to facilitate the training of multiple individuals in in-demand industry sectors or occupations (where the contract does not limit customer choice); and, for pay-for-performance contracts.

(2) The requirements of this part apply to all entities providing training to adult and dislocated workers, with specific exceptions for entities that carry out registered apprenticeship programs, as described in § 680.470.

§ 680.420 What is a "program of training services"?

A program of training services, as referred to in § 680.410(a), is one or more courses or classes, or a structured regimen that leads to:

(a)) A recognized post-secondary credential, secondary school diploma or its equivalent,

(b) Employment, or

(c)) Measurable skill gains toward such a credential or employment.

§ 680.430 Who is responsible for managing the eligible provider process?

(a) The Governor, in consultation with the State Board, establishes the criteria, information requirements and procedures, including procedures identifying the respective roles of the State and local areas, governing the eligibility of providers of training services to receive funds for adult and dislocated worker training activities as described under WIOA sec. 133(b).

(b) The Governor may designate a State agency (or appropriate State entity) to assist in carrying out the process and procedures for determining the eligibility of training providers. The Governor or such agency (or appropriate State entity) is responsible for:

(1) Ensuring the development and maintenance of the State list of eligible providers and programs, as described is §§ 680.450, 680.460, and 680.490;

(2) Ensuring that programs meet eligibility criteria and performance levels established by the State, including verifying the accuracy of the information;

(3) Removing programs that do not meet State-established program criteria or

performance levels, as described in § 680.480(c);

(4) Taking appropriate enforcement actions against providers that intentionally provide inaccurate information, or that substantially violate the requirements of WIOA, as described in § 680.480(a) and (b) (WIOA secs. 122(f)(1)(A) and (B)); and

(5) Disseminating the State list, accompanied by performance and cost information relating to each provider, to the public and the Local Boards throughout the State, as further described in § 680.500.

(c) The Local Board must:

(1) Carry out the procedures assigned to the Local Board by the State, such as determining the initial eligibility of entities providing a program of training services, renewing the eligibility of providers, and considering the possible termination of an eligible provider due to the provider's submission of inaccurate eligibility and performance information or the provider's substantial violation of WIOA requirements;

(2) Work with the State to ensure there are sufficient numbers and types of providers of training services, including eligible providers with expertise in assisting individuals with disabilities and eligible providers with expertise in assisting adults in need of adult education and literacy activities described under WIOA sec. 107(d)(10)(E), serving the local area; and

(3) Ensure the dissemination and appropriate use of the State list through the local one-stop system.

(d) The Local Board may:

(1) Make recommendations to the Governor on the procedure used in determining eligibility of providers;

(2) Require additional criteria and information from local providers as criteria to become

or remain eligible; and

(3) Set higher levels of performance than those required by the State as criteria for local providers to become or remain eligible to provide services in that particular local area.

§ 680.440 What are the transition procedures for Workforce Investment Act-eligible

providers to become eligible under the Workforce Innovation and Opportunity Act?

(a) The Governor may establish a transition procedure under which providers eligible to provide training services under WIA may continue to be eligible to provide such services until December 31, 2015 or such earlier date as the Governor determines to be appropriate.

(b) After this transition period, which may extend no later than December 31, 2015, the eligibility of these providers will be determined under the application procedure for continued eligibility established by the Governor as described in § 680.460.

(c)) Providers that were previously eligible under WIA are not subject to the initial eligibility procedures described under § 680.450.

§ 680.450 What is the initial eligibility procedure for new providers?

(a) All providers that have not previously been an eligible provider of training services under WIOA sec. 122 or WIA sec. 122, except for registered apprenticeship programs, must submit required information to be considered for initial eligibility in accordance with the Governor's procedures.

(b) Apprenticeship programs registered under the National Apprenticeship Act (NAA) are exempt from initial eligibility procedures. Registered apprenticeship programs must be included and maintained on the list of eligible providers of training services as long as the corresponding program remains registered, as described at WIOA sec. 122(a)(3). Procedures for registered apprenticeship programs to be added and maintained on the list are described in §

680.470.

(c) In establishing the State requirements described in paragraph (d) of this section, the Governor must, in consultation with the State Board, develop a procedure for determining the eligibility of training providers. This procedure, which must be described in the State Plan, must be developed after:

(1) Soliciting and taking into consideration recommendations from Local Boards and providers of training services within the State;

(2) Providing an opportunity for interested members of the public, including representatives of business and labor organizations, to submit comments on the procedure; and

(3) Designating a specific time period for soliciting and considering the recommendations of Local Boards and providers, and for providing an opportunity for public comment.

(d) For institutions of higher education that provide a program that leads to a recognized post-secondary credential and for other public or private providers of programs of training services, including joint labor-management organizations, and providers of adult education and literacy activities, the Governor must establish criteria and State requirements for providers seeking initial eligibility.

(e) The Governor must require providers seeking initial eligibility to provide verifiable program specific performance information. At a minimum, these criteria must require applicant providers to:

(1) Describe each program of training services to be offered;

(2) Provide information addressing a factor related to the indicators of performance, as described in WIOA secs. 116(b)(2)(A)(i)(I)-(IV) and § 680.460(g)(1) through (4) which include unsubsidized employment during the second quarter after exit, unsubsidized employment during the fourth quarter after exit, median earnings and credentials attainment;

(3) Describe whether the provider is in a partnership with a business;

(4) Provide other information the Governor may require in order to demonstrate high quality training services, including a program of training services that leads to a recognized post- secondary

credential; and

(5) Provide information that addresses alignment of the training services with in-demand industry sectors and occupations, to the extent possible.

(f) In establishing the initial eligibility procedures and criteria, the Governor may establish minimum standards, based on the performance information described in paragraph (e) of this section.

(g) Under WIOA sec. 122(b)(4)(B), providers receive initial eligibility for only 1 fiscal year for a particular program.

(h) After the initial eligibility expires, these initially-eligible providers are subject to the Governor's application procedures for continued eligibility, described at § 680.460, in order to remain eligible.

§ 680.460 What is the application procedure for continued eligibility?

(a) The Governor must establish an application procedure for training providers to maintain their continued eligibility. The application procedure must take into account the provider's prior eligibility status.

(1) Training providers that were previously eligible under WIA, as of July 21, 2014, will be subject to the application procedure for continued eligibility after the close of the Governor's transition period for implementation, described in § 680.440.

(2) Training providers that were not previously eligible under WIA and have been determined to be initially-eligible under WIOA, under the procedures described at **§**

680.450, will be subject to the application procedure for continued eligibility after their initial eligibility expires.

(b) The Governor must develop this procedure after:

(1) Soliciting and taking into consideration recommendations from Local Boards and providers of training services within the State;

(2) Providing an opportunity for interested members of the public, including representatives of business and labor organizations, to submit comments on such procedure; and

(3) Designating a specific time period for soliciting and considering the recommendations of Local Boards and providers, and for providing an opportunity for public comment.

(c) Apprenticeship programs registered under the National Apprenticeship Act (NAA) must be included and maintained on the list of eligible providers of training services for as long as the corresponding program remains registered. The Governor's procedure must include a mechanism for registered apprenticeship programs to indicate interest in being included on the list, as described in § 680.470.

(d) The application procedure must describe the roles of the State and local areas in receiving and reviewing provider applications and in making eligibility determinations.

(e) The application procedure must be described in the State Plan.

(f) In establishing eligibility criteria, the Governor must take into account:

(1) The performance of providers of training services on the performance accountability measures described in WIOA secs. 116(b)(2)(A)(i)(I)-(IV) and required by WIOA sec.

122(b)(2), which may include minimum performance standards, and other appropriate measures of performance outcomes for program participants receiving training under WIOA title I-B, as determined by the Governor. Until data from the conclusion of each performance indicator's first data cycle is available, the Governor may take into account alternate factors related to such performance measure.

(2) Ensuring access to training services throughout the State including rural areas and through the use of technology;

(3) Information reported to State agencies on Federal and State training programs other than programs within WIOA title I-B;

(4) The degree to which training programs relate to in-demand industry sectors and occupations in the State;

(5) State licensure requirements of training providers;

(6) Encouraging the use of industry-recognized certificates and credentials;

(7) The ability of providers to offer programs that lead to post-secondary credentials;

(8) The quality of the program of training services including a program that leads to a

recognized post-secondary credential;

(9) The ability of the providers to provide training services to individuals who are employed and individuals with barriers to employment;

(10) Whether the providers timely and accurately submitted eligible training provider performance reports as required under WIOA sec. 116(d)(4); and

(11) Other factors that the Governor determines are appropriate in order to ensure: the accountability of providers; that one-stop centers in the State will meet the needs of local employers and participants; and, that participants will be given an informed choice among providers.

(g) The information requirements that the Governor establishes under paragraph (f)(1) of this section must require training providers to submit appropriate, accurate and timely information for participants receiving training under WIOA title I-B. That information must include:

(1) The percentage of program participants who are in unsubsidized employment during the second quarter after exit from the program;

(2) The percentage of program participants who are in unsubsidized employment during the fourth quarter after exit from the program;

(3) The median earnings of program participants who are in unsubsidized employment during the second quarter after exit from the program;

(4) The percentage of program participants who obtain a recognized post-secondary credential, or a secondary school diploma or its recognized equivalent during participation in or within 1 year after exit from the program;

(5) Information on recognized post-secondary credentials received by program participants;

(6) Information on cost of attendance, including costs of tuition and fees, for program participants;

(7) Information on the program completion rate for such participants.

(h) The eligibility criteria must require that:

(1) Providers submit performance and cost information as described in paragraph (g) of this section and in the Governor's procedures for each program of training services for which the provider has been determined to be eligible, in a timeframe and manner determined by the State, but at least every 2 years; and

(2) That the collection of information required to demonstrate compliance with the criteria is not unduly burdensome or costly to providers (WIOA sec. 122(b)(1)(J)(iv)).

(i) The procedure for continued eligibility must also provide for the State to review biennially-required provider eligibility information to assess the renewal of training provider eligibility. Such procedures may establish minimum levels of training provider performance as criteria for continued eligibility.

(j) The procedure for biennial review of the provider eligibility must include verification of the registration status of registered apprenticeship programs as described in § 680.470.

(k) Local Boards may require higher levels of performance for local programs than the levels specified in the procedures established by the Governor.

(l) The Governor may establish procedures and timeframes for providing technical assistance to eligible providers of training who are not intentionally supplying inaccurate information or who have not substantially violated any of the requirements under this section but are failing to meet the criteria and information requirements due to undue cost or burden.

§ 680.470 What is the procedure for registered apprenticeship programs that seek to be

included in a State's eligible training provider list?

(a) All registered apprenticeship programs that are registered with the U.S. Department of Labor, Office of Apprenticeship, or a recognized State apprenticeship agency are automatically eligible to be included in the State list of eligible training providers. Some program sponsors may not wish to be included on the State eligible training provider list.

Therefore, the Governor must establish a mechanism for registered apprenticeship program

sponsors in the State to indicate that the program sponsor wishes to be included on the State eligible training provider list. This mechanism should be developed with the assistance of the

U.S. Department of Labor Office of Apprenticeship representative in the State or, if the State oversees the administration of the apprenticeship system, with the assistance of the recognized State apprenticeship agency.

(b) Once on the State eligible training provider list, registered apprenticeship programs will remain on the list until they are deregistered or until the registered apprenticeship program

notifies the State that it no longer wants to be included on the list.

(c) Inclusion of a registered apprenticeship in the State eligible training provider list allows an individual who is eligible to use WIOA title I-B funds to use those funds toward apprentice training, consistent with their availability and limitations as prescribed by § 680.300. The use of individual training accounts and other WIOA title I-B funds toward apprenticeship training is further described in § 680.330.

(d) The Governor is encouraged to consult with the State and Local Boards, ETA's Office of Apprenticeship, recognized State apprenticeship agencies (where they exist in the Governor's State) or other State agencies, to establish voluntary reporting of performance information.

§ 680.480 May an eligible training provider lose its eligibility?

(a)) Yes. A training provider must deliver results and provide accurate information in order to retain its status as an eligible training provider.

(b) Providers determined to have intentionally supplied inaccurate information or to have substantially violated any provision of title I of WIOA or the WIOA regulations, including 29 CFR part 37, must be removed from the list in accordance with the enforcement provisions of WIOA sec. 122(f). A provider whose eligibility is terminated under these conditions must be terminated for not less than 2 years and is liable to repay all adult and dislocated worker training funds it received during the period of noncompliance. The Governor must specify in the procedures which individual or entity is responsible for making these determinations and the process by which the determination will be made, which must include an opportunity for a hearing that meets the

requirements of 20 CFR 683.630(b).

(c) As a part of the biennial review of eligibility established by the Governor, the State must remove provider programs that fail to meet criteria established by the Governor to remain eligible, which may include failure to meet established minimum performance levels.

(d) The Governor must establish an appeals procedure for providers of training to appeal a denial of eligibility under this subpart that meets the requirements of 20 CFR 683.630(b), which explains the appeals process for denial or termination of eligibility of a provider of training services.

(e)) Where a Local Board has established higher minimum standards, according to § 680.460(k), the Local Board may remove a provider program from the eligible programs in that local area for failure to meet established criteria. The Local Board must establish an appeals procedure for providers of training to appeal a denial of eligibility under this subpart that meets the requirements of 20 CFR 683.630(b), which explains the appeals process for denial or termination of eligibility of a provider of training services.

§ 680.490 What kind of performance and cost information must eligible training providers

provide for each program of training?

(a) In accordance with the State procedure and § 680.460(h), eligible providers of training services must submit, at least every 2 years, appropriate, timely and accurate performance and cost information.

(b) Program-specific performance information must include:

(1) The information described in WIOA sec. 122(b)(2)(A) for individuals participating in the programs of training services who are receiving assistance under WIOA sec. 134. This information includes indicators of performance as described in WIOA secs. 116(b)(2)(I)-(IV) and § 680.460(g)(1) through (4).

(2) Information identifying the recognized post-secondary credentials received by such participants.

(3) Program cost information, including tuition and fees, for WIOA participants in the program, and

(4) Information on the program completion rate for WIOA participants.

(c) Governors may require any additional performance information (such as the information described at WIOA sec. 122(b)(1)) that the Governor determines to be appropriate to determine or maintain eligibility.

(d) Governors must establish a procedure by which a provider can demonstrate that providing additional information required under this section would be unduly burdensome or costly. If the Governor determines that providers have demonstrated such extraordinary costs or undue burden:

(1) The Governor must provide access to cost-effective methods for the collection of the information;

(2) The Governor may provide additional resources to assist providers in the collection of

the information from funds for statewide workforce investment activities reserved under WIOA secs. 128(a) and 133(a)(1); or

(3) The Governor may take other steps to assist training providers in collecting and supplying required information such as offering technical assistance.

§ 680.500 How is the State list of eligible training providers disseminated?

(a) In order to assist participants in choosing employment and training activities, the Governor or State agency must disseminate the State list of eligible training providers and accompanying performance and cost information to Local Boards in the State and to members of the public online including through Web sites and searchable databases and through whatever other means the State uses to disseminate information to consumers, including the one-stop delivery system and its program partners throughout the State.

(b) The State list and information must be updated regularly and provider eligibility must be reviewed biennially according to the procedures established by the Governor in § 680.460(i).

(c) In order to ensure informed consumer choice, the State eligible training provider list and accompanying information must be widely available to the public through electronic means, including Web sites and searchable databases, as well as through any other means the State uses to disseminate information to consumers. The list and accompanying information must be available through the one-stop delivery system and its partners including the State's secondary and post-secondary education systems. The eligible training provider list should be accessible to individuals seeking information on training outcomes, as well as participants in employment and training activities funded under WIOA, including those under § 680.210, and other programs. In

accordance with WIOA sec. 188, the State list must also be accessible to individuals with disabilities.

(d) The State eligible training provider list must be accompanied by appropriate information to assist participants in choosing employment and training activities. Such information must include:

(1) Recognized post-secondary credential(s) offered;

(2) Provider information supplied to meet the Governor's eligibility procedure as described in §§ 680.450 and 680.460;

3) Performance and cost information as described in § 680.490; and

(4) Additional information as the Governor determines appropriate.

(e) The State list and accompanying information must be made available in a manner that does not reveal personally identifiable information about an individual participant. In addition, in developing the information to accompany the State list described in § 680.490(b), disclosure of personally identifiable information from an education record must be carried out in accordance with the Family Educational Rights and Privacy Act, including the circumstances relating to prior written consent.

§ 680.510 In what ways can a Local Board supplement the information available from the

State list?

(a) Local Boards may supplement the criteria and information requirements established by the Governor in order to support informed consumer choice and the achievement of local performance measures.

(b) This additional information may include:

(1) Information on programs of training services that are linked to occupations in demand in the local area;

(2) Performance and cost information, including program-specific performance and cost information, for the local outlet(s) of multi-site eligible providers;

(3) Information that shows how programs are responsive to local requirements; and

(4) Other appropriate information related to the objectives of WIOA.

§ 680.520 May individuals choose training providers located outside of the local area?

Yes, individuals may choose any of the eligible providers and programs on the State list.

A State may also establish a reciprocal agreement with other States to permit providers of eligible training programs in each State to accept individual training accounts provided by the other State. See WIOA sec. 122(g). Providers of training services that are located outside the local area may not be subject to State eligibility procedures if the provider has been determined eligible by another State with such an agreement.

§ 680.530 What requirements apply to providers of on-the-job-training, customized

training, incumbent worker training, and other training exceptions?

Providers of on-the-job training, customized training, incumbent worker training, internships, paid or unpaid work experience, or transitional employment are not subject to the same requirements as entities listed on the eligible training provider list. For these training programs, one-stop operators in a local area must collect such performance information as the Governor may require and determine whether the providers meet the Governor's performance criteria. The Governor may require one-stop operators to disseminate a list of providers that have met the performance criteria, along with the relevant performance information about them,

through the one-stop delivery system. Providers that meet the criteria are considered eligible

providers of training services. These providers are not subject to the other requirements of

WIOA sec. 122 or this part.

Subpart E—Priority and Special Populations

§ 680.600 What priority must be given to low-income adults and public assistance recipients and individuals who are basic skills deficient served with adult funds under title I?

(a) WIOA states, in sec. 134(c)(3)(E), that priority for individualized career services (see § 678.430(b)) and training services funded with title I adult funds must be given to recipients of public assistance, other low-income individuals, who are basic skills deficient (as defined in WIOA sec. 3(5)(B)) in the local area.

(b) States and local areas must establish criteria by which the one-stop operator will apply the priority under WIOA sec. 134(c)(3)(E). Such criteria may include the availability of other funds for providing employment and training-related services in the local area, the needs of the specific groups within the local area, and other appropriate factors.

(c) The priority established under paragraph (b) of this section does not necessarily mean that these services may only be provided to recipients of public assistance, other low-income individuals, and individuals without basic work skills. The Local Board and the Governor may establish a process that also gives priority to other individuals eligible to receive such services, provided that it is consistent with priority of service for veterans (see § 680.650).

§ 680.610 Does the statutory priority for use of adult funds also apply to dislocated worker

funds?

No, the statutory priority applies only to adult funds for individualized career services, as described in § 680.150(b), and training services. Funds allocated for dislocated workers are not subject to this requirement.

§ 680.620 How does the Temporary Assistance for Needy Families program relate to the

one-stop delivery system?

The local TANF program is a required partner in the one-stop delivery system. Part 678 describes the roles of such partners in the one-stop delivery system and it applies to the TANF program. TANF serves individuals who may also be served by the WIOA programs and, through

appropriate linkages and referrals, these customers will have access to a broader range of services through the cooperation of the TANF program in the one-stop system. TANF participants, who are determined to be WIOA eligible, and who need occupational skills training may be referred through the one-stop system to receive WIOA training, when TANF grant and other grant funds are not available to the individual in accordance with § 680.230(a). WIOA participants who are also determined TANF eligible may be referred to the TANF operator for assistance.

§ 680.630 How does a displaced homemaker qualify for services under title I?

(a) Individuals who meet the definitions of a "displaced homemaker" (WIOA sec. 3(16)) qualify for career and training services with dislocated worker title I funds.

(b) Displaced homemakers may also qualify for career and training services with adult funds under title I if the requirements of this part are met (see §§ 680.120 and 680.600).

(c) Displaced homemakers may also be served in statewide employment and training projects conducted with reserve funds for innovative programs for displaced homemakers, as described in 20 CFR 682.210(c).

(d) The definition of displaced homemaker includes the dependent spouse of a member of the Armed Forces on active duty (as defined in sec. 101(d)(1) of title 10, United States Code) and whose family income is significantly reduced because of a deployment, a call or order to active duty under a provision of law referred to in sec. 101(a)(13)(B) of title 10, United State Code, a permanent change of station, or the service-connected death or disability of the member.

§ 680.640 May an individual with a disability whose family does not meet income eligibility

criteria under the Act be eligible for priority as a low-income adult?

Yes, even if the family of an individual with a disability does not meet the income eligibility criteria, the individual with a disability is to be considered a low-income individual if the individual's own income:

(a)) Meets the income criteria established in WIOA sec. 3(36)(A)(vi); or

(b) Meets the income eligibility criteria for payments under any Federal, State or local public assistance program (see WIOA sec. 3(36)(A)(i)).

§ 680.650 Do veterans receive priority of service under the Workforce Innovation and

Opportunity Act?

Yes, veterans under WIOA sec. 3(63)(A) and 38 U.S.C. 101 receive priority of service in all Department of Labor-funded training programs under 38 U.S.C. 4215 and described in 20 CFR 1010. A veteran must still meet each program's eligibility criteria to receive services under the respective employment and training program. For income-based eligibility determinations, amounts paid while on active duty or paid by the Department of Veterans Affairs (VA) for vocational rehabilitation, disability payments, or related VA-funded programs are not to be considered as income in accordance with 38 U.S.C. 4213 and 20 CFR 683.230.

§ 680.660 Are separating military service members eligible for dislocated worker activities

under the Workforce Innovation and Opportunity Act?

If the separating service member is separating from the Armed Forces with a discharge that is anything other than dishonorable, the separating service member qualifies for dislocated worker activities based on the following criteria:

(a) The separating service member has received a notice of separation, a DD-214 from the Department of Defense, or other documentation showing a separation or imminent separation from the Armed Forces to satisfy the termination or layoff part of the dislocated worker eligibility criteria in WIOA sec. 3(15)(A)(i);

(b) The separating service member qualifies for the dislocated worker eligibility criteria on eligibility for or exhaustion of unemployment compensation in WIOA sec. 3(15)(A)(ii)(I) or (II); and,

(c) As a separating service member, the individual meets the dislocated worker eligibility criteria that the individual is unlikely to return to a previous industry or occupation in WIOA sec. 3(15)(A)(iii).

Subpart F—Work-based Training

§ 680.700 What are the requirements for on-the-job training?

(a) On-the-job training (OJT) is defined at WIOA sec. 3(44). OJT is provided under a contract with an employer in the public, private non-profit, or private sector. Through the OJT contract, occupational training is provided for the WIOA participant in exchange for the reimbursement, typically up to 50 percent of the wage rate of the participant, for the extraordinary costs of providing the training and supervision related to the training. In limited circumstances, as provided in WIOA sec. 134(c)(3)(h) and § 680.730, the reimbursement may be up to 75 percent of the wage rate of the participant.

(b) On-the-job training contracts under WIOA title I, must not be entered into with an employer who has received payments under previous contracts under WIOA or WIA if the employer has exhibited a pattern of failing to provide on-the-job training participants with continued long-term employment as regular employees with wages and employment benefits (including health benefits) and working conditions at the same level and to the same extent as other employees working a similar length of time and doing the same type of work. (WIOA sec. 194(4))

(c) An OJT contract must be limited to the period of time required for a participant to become proficient in the occupation for which the training is being provided. In determining the appropriate length of the contract, consideration should be given to the skill requirements of the occupation, the academic and occupational skill level of the participant, prior work experience, and the participant's individual employment plan. (WIOA sec. 3(44)(C))

§ 680.710 What are the requirements for on-the-job training contracts for employed

workers?

OJT contracts may be written for eligible employed workers when:

(a) The employee is not earning a self-sufficient wage as determined by Local Board policy;

(b) The requirements in § 680.700 are met; and

(c) The OJT relates to the introduction of new technologies, introduction to new production or service procedures, upgrading to new jobs that require additional skills, workplace literacy, or other appropriate purposes identified by the Local Board.

§ 680.720 What conditions govern on-the-job training payments to employers?

(a) On-the-job training payments to employers are deemed to be compensation for the extraordinary costs associated with training participants and potentially lower productivity of the participants while in the OJT.

(b) Employers may be reimbursed up to 50 percent of the wage rate of an OJT participant, and up to 75 percent using the criteria in § 680.730, for the extraordinary costs of providing the training and additional supervision related to the OJT. (WIOA secs. 3(44) and 134(c)(3)(H)(i))

(c) Employers are not required to document such extraordinary costs.

§ 680.730 Under what conditions may a Governor or Local Board raise the on-the-job

training reimbursement rate up to 75 percent of the wage rate?

(a) The Governor may increase the reimbursement rate for OJT contracts funded through the statewide employment and training activities described in § 682.210 up to 75 percent, and the Local Board may also increase the reimbursement rate for OJT contracts described in § 680.320(a)(1) up to 75 percent, when taking into account the following factors: (WIOA sec.

134(c)(H)(ii))

(1) The characteristics of the participants taking into consideration whether they are "individuals with barriers to employment," as defined in WIOA sec. 3(24);

(2) The size of the employer, with an emphasis on small businesses;

(3) The quality of employer-provided training and advancement opportunities, for example if the OJT contract is for an in-demand occupation and will lead to an industry-recognized credential; and

(4) Other factors the Governor or Local Board may determine to be appropriate, which

may include the number of employees participating, wage and benefit levels of the employees (both at present and after completion), and relation of the training to the competitiveness of the participant.

(b) Governors or Local Boards must document the factors used when deciding to increase the wage reimbursement levels above 50 percent up to 75 percent.

§ 680.740 How can on-the-job training funds be used to support placing participants into a

registered apprenticeship program?

(a) OJT contracts may be written with registered apprenticeship programs or participating employers in registered apprenticeship programs for the on-the-job training portion of the registered apprenticeship program consistent with § 680.700. Depending on the length of the registered apprenticeship and State and local OJT policies, these funds may cover some or all of the registered apprenticeship training.

(b) If the apprentice is unemployed at the time of participation, the OJT must be conducted as described in § 680.700. If the apprentice is employed at the time of participation, the OJT must be conducted as described in § 680.700

§ 680.750 Can Individual Training Account and on-the-job training funds be combined to

support placing participants into a registered apprenticeship program?

There is no Federal prohibition on using both ITA and OJT funds when placing participants into a registered apprenticeship program. See § 680.330 on using ITAs to support participants in registered apprenticeship.

§ 680.760 What is customized training?

Customized training is training:

(a) That is designed to meet the special requirements of an employer (including a group of employers);

(b) That is conducted with a commitment by the employer to employ an individual upon successful completion of the training; and

(c) For which the employer pays for a significant cost of the training, as determined by the Local Board in accordance with the factors identified in WIOA sec. 3(14).

§ 680.770 What are the requirements for customized training for employed workers?

Customized training of an eligible employed individual may be provided for an employer or a group of employers when:

(a) The employee is not earning a self-sufficient wage as determined by Local Board policy;

(b) The requirements in § 680.760 are met; and

(c) The customized training relates to the purposes described in § 680.710(c) or other appropriate purposes identified by the Local Board.

§ 680.780 Who is an "incumbent worker" for purposes of statewide and local employment

and training activities?

States and local areas must establish policies and definitions to determine which workers, or groups of workers, are eligible for incumbent worker services (WIOA sec. 134(d)(4)). To qualify as an incumbent worker, the incumbent worker needs to be employed, meet the Fair Labor Standards Act requirements for an employer-employee relationship, and have an established employment history with the employer for 6 months or more. The training must satisfy the requirements in WIOA sec. 134(d)(4) and § 680.790 and increase the competitiveness of the employee or employer. An incumbent worker does not necessarily have to meet the eligibility requirements for career and training services for adults and dislocated workers under this Act.

§ 680.790 What is incumbent worker training?

Incumbent Worker training, for purposes of WIOA sec. 134(d)(4)(B), is training:

(a)) Designed to meet the special requirements of an employer (including a group of employers) to retain a skilled workforce or avert the need to lay off employees by assisting the workers in obtaining the skills necessary to retain employment.

(b) Conducted with a commitment by the employer to retain or avert the layoffs of the incumbent worker(s) trained.

§ 680.800 What funds may be used for incumbent worker training?

(a) The local area may reserve up to 20 percent of their combined total of adult and dislocated worker allotments for incumbent worker training as described in § 680.790 (see WIOA sec. 134(d)(4)(A)(i));

(b) The State may use their statewide activities funds (per WIOA sec. 134(a)(3)(A)(i)) and Rapid Response funds for statewide incumbent worker training activities (see §§ 682.210(b) and 682.320(b)(3)).

§ 680.810 What criteria must be taken into account for an employer to be eligible to

receive local incumbent worker funds?

The Local Board must consider under WIOA sec. 134(d)(4)(A)(ii):

(a) The characteristics of the participants in the program;

(b) The relationship of the training to the competitiveness of a participant and the employer; and

(c) Other factors the Local Board determines appropriate, including number of employees trained, wages and benefits including post training increases, and the existence of other training opportunities provided by the employer.

§ 680.820 Are there cost sharing requirements for local area incumbent worker training?

Yes. Under WIOA secs. 134(d)(4)(C) and 134(d)(4)(D)(i)-(iii), employers participating in incumbent worker training are required to pay the non-Federal share of the cost of providing training to their incumbent workers. The amount of the non-Federal share will depend upon the limits established under WIOA secs. 134(d)(4)(ii)(C) and (D).

§ 680.830 What is a transitional job?

A transitional job is one that provides a limited work experience, that is subsidized in the public, private, or non-profit sectors for those individuals with barriers to employment because of chronic unemployment or inconsistent work history; these jobs are designed to enable an individual to establish a work history, demonstrate work success, and develop the skills that lead to unsubsidized employment. (WIOA sec. 134 (d)(5))

§ 680.840 What funds may be used for transitional jobs?

The local area may use up to 10 percent of their combined total of adult and dislocated

worker allotments for transitional jobs as described in § 680.810 (see WIOA sec. 134(d)(5)).

Transitional jobs must be combined with comprehensive career services (see § 680.150) and supportive services (see § 680.900).

§ 680.850 May funds provided to employers for work-based training be used to assist,

promote, or deter union organizing?

No, funds provided to employers for work-based training, as described in this subpart, must not be used to directly or indirectly assist, promote or deter union organizing. (WIOA sec. 181(b)(7))

Subpart G—Supportive Services

§ 680.900 What are supportive services for adults and dislocated workers?

Supportive services for adults and dislocated workers are defined at WIOA sec. 3(59) and secs. 134(d)(2) and (3). They include services such as transportation, child care, dependent care, housing, and needs-related payments that are necessary to enable an individual to participate in activities authorized under WIOA secs. 134(c)(2) and (3). Local Boards, in consultation with the one-stop partners and other community service providers, must develop a policy on supportive services that ensures resource and service coordination in the local area. The policy should address procedures for referral to such services, including how such services will be funded when they are not otherwise available from other sources. The provision of accurate information about the availability of supportive services in the local area, as well as referral to such activities, is one of the career services that must be available to adults and dislocated workers through the one-stop delivery system. (WIOA sec. 134(c)(2)(A)(ix) and § 678.430) Local Boards must ensure that needs-related payments are made in a manner consistent with §§ 680.930, 680.940,

680.950, 680.960, and 680.970.

§ 680.910 When may supportive services be provided to participants?

(a)) Supportive services may only be provided to individuals who are:

(1) Participating in career or training services as defined in WIOA secs. 134(c)(2) and (3); and

(2) Unable to obtain supportive services through other programs providing such services. (WIOA sec. 134(d)(2)(B))

(b) Supportive services may only be provided when they are necessary to enable individuals to participate in career service or training activities. (see WIOA sec. 134(d)(2)(A) and WIOA sec. 3(59))

§ 680.920 Are there limits on the amounts or duration of funds for supportive services?

(a) Local Boards may establish limits on the provision of supportive services or provide the one-stop operator with the authority to establish such limits, including a maximum amount of funding and maximum length of time for supportive services to be available to participants.

(b) Procedures may also be established to allow one-stop operators to grant exceptions to the limits established under paragraph (a) of this section.

§ 680.930 What are needs-related payments?

Needs-related payments provide financial assistance to participants for the purpose of enabling them to participate in training and are a supportive service authorized by WIOA sec.

134(d)(3). Unlike other supportive services, in order to qualify for needs-related payments a participant must be enrolled in training.

§ 680.940 What are the eligibility requirements for adults to receive needs-related

payments?

Adults must:

(a) Be unemployed,

(b) Not qualify for, or have ceased qualifying for, unemployment compensation; and

(c) Be enrolled in a program of training services under WIOA sec. 134(c)(3).

§ 680.950 What are the eligibility requirements for dislocated workers to receive needs-

related payments?

To receive needs-related payments, a dislocated worker must:

(a) Be unemployed, and:

(1) Have ceased to qualify for unemployment compensation or trade readjustment allowance under TAA; and

(2) Be enrolled in a program of training services under WIOA sec. 134(c)(3) by the end of the 13th week after the most recent layoff that resulted in a determination of the worker's eligibility as a dislocated worker, or, if later, by the end of the 8th week after the worker is informed that a short-term layoff will exceed 6 months; or

(b) Be unemployed and did not qualify for unemployment compensation or trade readjustment assistance under TAA and be enrolled in a program of training services under WIOA sec. 134(c)(3).

§ 680.960 May needs-related payments be paid while a participant is waiting to start

training classes?

Yes, payments may be provided if the participant has been accepted in a training program that will begin within 30 calendar days. The Governor may authorize local areas to extend the 30-day period to address appropriate circumstances.

§ 680.970 How is the level of needs-related payments determined?

(a) The payment level for adults must be established by the Local Board.

(b) For dislocated workers, payments must not exceed the greater of either of the following levels:

(1) The applicable weekly level of the unemployment compensation benefit, for participants who were eligible for unemployment compensation as a result of the qualifying dislocation; or

(2) The poverty level for an equivalent period, for participants who did not qualify for unemployment compensation as a result of the qualifying layoff. The weekly payment level must be adjusted to reflect changes in total family income, as determined by Local Board policies. (WIOA sec. 134(d)(3)(C))

8. Add part 681 to read as follows:

PART 681 – YOUTH ACTIVITIES UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

Subpart A—Standing Youth Committees

Sec.

681.100 What is a standing youth committee?

681.110 Who is included on a standing youth committee?

681.120 What does a standing youth committee do?

Subpart B—Eligibility for Youth Services

Sec.

681.200 Who is eligible for youth services?

681.210 Who is an “out-of-school youth”?

681.220 Who is an “in-school youth”?

681.230 What does “school” refer to in the “not attending or attending any school” in the out-of-school and in-school definitions?

681.240 When do local youth programs verify dropout status, particular for youth attending alternative schools?

681.250 Who does the low-income eligibility requirement apply to?

681.260 How does the Department define "high poverty area" for the purposes of the special rule for low-income youth in Workforce Innovation and Opportunity Act?

681.270 May a local program use eligibility for free or reduced price lunches under the National School Lunch Program as a substitute for the income eligibility criteria under title I of the Workforce Innovation and Opportunity Act?

681.280 Is a youth with a disability eligible for youth services under the Act if their family income exceeds the income eligibility criteria?

681.290 How does the Department define the "basic skills deficient" criterion this part?

681.300 How does the Department define the "requires additional assistance to complete an educational program, or to secure and hold employment" criterion in this part?

681.310 Must youth participants enroll to participate in the youth program?

Subpart C—Youth Program Design, Elements, and Parameters

Sec.

681.400 What is the process used to select eligible youth providers?

681.410 Does the requirement that a State and local area expend at least 75 percent of youth funds to provide services to out-of-school youth apply to all youth funds?

681.420 How must Local Boards design Workforce Innovation and Opportunity Act youth programs?

681.430 May youth participate in both the Workforce Innovation and Opportunity Act youth and adult programs concurrently, and how do local program operators track concurrent enrollment in the Workforce Innovation and Opportunity Act youth and adult programs?

681.440 How does a local youth program determine if an 18 to 24 year old is enrolled in the Workforce Innovation and Opportunity Act youth program or the Workforce Innovation and Opportunity Act adult program?

681.450 For how long must a local Workforce Innovation and Opportunity Act youth program serve a participant?

681.460 What services must local programs offer to youth participants?

681.470 Does the Department require local programs to use WIOA funds for each of the 14 program elements?

681.480 What is a pre-apprenticeship program?

681.490 What is adult mentoring?

681.500 What is financial literacy education?

681.510 What is comprehensive guidance and counseling?

681.520 What are leadership development opportunities?

681.530 What are positive social and civic behaviors?

681.540 What is occupational skills training?

681.550 Are Individual Training Accounts permitted for youth participants?

681.560 What is entrepreneurial skills training and how is it taught?

681.570 What are supportive services for youth?

681.580 What are follow-up services for youth?

681.590 What is the work experience priority? 681.600 What are work experiences?

681.610 How will local Workforce Innovation and Opportunity Act youth programs track the work experience priority?

681.620 Does the Workforce Innovation and Opportunity Act require Local Boards to offer summer employment opportunities in the local youth program?

681.630 How are summer employment opportunities administered?

681.640 What does education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster mean?

681.650 Does the Department allow incentive payments for youth participants?

681.660 How can parents, youth, and other members of the community get involved in the design and implementation of local youth programs?

Subpart D—One-Stop Services to Youth

Sec.

681.700 What is the connection between the youth program and the one-stop service delivery system?

681.710 Do Local Boards have the flexibility to offer services to area youth who are not eligible under the youth program through the one-stop centers?

2014).

Authority: Secs. 107, 121, 123, 129, 189, 503, Pub. L. 113-128, 128 Stat. 1425 (Jul. 22,

Subpart A—Standing Youth Committees

§ 681.100 What is a standing youth committee?

WIOA eliminates the requirement for Local Boards to establish a youth council.

However, the Local Board may choose to establish a standing committee to provide information and to assist with planning, operational, oversight, and other issues relating to the provision of services to youth. If the Local Board does not designate a standing youth committee, it retains responsibility for all aspects of youth formula programs.

§ 681.110 Who is included on a standing youth committee?

(a) If a Local Board decides to form a standing youth committee, the committee must include a member of the Local Board, who chairs the committee, members of community-based organizations with a demonstrated record of success in serving eligible youth and other

individuals with appropriate expertise and experience who are not members of the Local Board (WIOA secs. 107(b)(4)(A) and (ii)).

(b) The committee should reflect the needs of the local area. The committee members appointed for their experience and expertise may bring their expertise to help the committee address the employment, training education, human and supportive service needs of eligible youth including out-of-school youth. Members may represent agencies such as education, training, health, mental health, housing, public assistance, and justice, or be representatives of philanthropic or economic and community development organizations, and employers. The committee may also include parents, participants, and youth. (WIOA sec. 129(c)(3)(C))

(c)) A Local Board may designate an existing entity such as an effective youth council as the standing youth committee if it fulfills the requirements above in paragraph (a) of this section.

§ 681.120 What does a standing youth committee do?

Under the direction of the Local Board, a standing youth committee may:

(a)) Recommend policy direction to the Local Board for the design, development, and implementation of programs that benefit all youth;

(b) Recommend the design of a comprehensive community workforce development system to ensure a full range of services and opportunities for all youth, including disconnected youth;

(c)) Recommend ways to leverage resources and coordinate services among schools, public programs, and community-based organizations serving youth;

(d) Recommends ways to coordinate youth services and recommend eligible youth

service providers; and

(e)) Provide on-going leadership and support for continuous quality improvement for local youth programs;

(f) Assist with planning, operational, and other issues relating to the provision of services to youth; and

(g) If so delegated by the Local Board after consultation with the CEO, oversee eligible youth providers, as well as other youth program oversight responsibilities.

Subpart B—Eligibility for Youth Services

§ 681.200 Who is eligible for youth services?

Both in-school youth (ISY) and out-of-school youth (OSY) are eligible for youth services. (WIOA sec. 3(18))

§ 681.210 Who is an "out-of-school youth"?

An out-of-school youth (OSY) is an individual who is:

(a) Not attending any school (as defined under State law);

(b) Not younger than 16 or older than age 24 at time of enrollment. Because age eligibility is based on age at enrollment, participants may continue to receive services beyond the age of 24 once they are enrolled in the program; and

(c) One or more of the following:

(1) A school dropout;

(2) A youth who is within the age of compulsory school attendance, but has not attended school for at least the most recent complete school year calendar quarter. School year calendar quarter is based on how a local school district defines its school year quarters;

(3) A recipient of a secondary school diploma or its recognized equivalent who is a low-income individual and is either basic skills deficient or an English language learner;

(4) An individual who is subject to the juvenile or adult justice system;

(5) A homeless individual (as defined in sec. 41403(6) of the Violence Against Women Act of 1994 (42 U.S.C. 14043e–2(6))), a homeless child or youth (as defined in sec. 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2))), a runaway, in foster care or has aged out of the foster care system, a child eligible for assistance under sec. 477 of the Social Security Act (42 U.S.C. 677), or in an out-of-home placement;

(6) An individual who is pregnant or parenting;

(7) An individual with a disability;

(8) A low-income individual who requires additional assistance to enter or complete an educational program or to secure or hold employment. (WIOA secs. 3(46) and 129(a)(1)(B))

§ 681.220 Who is an "in-school youth"?

An in-school youth (ISY) is an individual who is:

(a) Attending school (as defined by State law), including secondary and post-secondary school;

(b) Not younger than age 14 or (unless an individual with a disability who is attending school under State law) older than age 21 at time of enrollment. Because age eligibility is based on age at enrollment, participants may continue to receive services beyond the age of 21 once they are enrolled in the program;

(c)) A low-income individual; and

(d) One or more of the following:

(1) Basic skills deficient;

(2) An English language learner;

(3) An offender;

(4) A homeless individual (as defined in sec. 41403(6) of the Violence Against Women Act of 1994 (42 U.S.C. 14043e–2(6))), a homeless child or youth (as defined in sec. 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2))), a runaway, in foster care or has aged out of the foster care system, a child eligible for assistance under sec. 477 of the Social Security Act (42 U.S.C. 677), or in an out-of-home placement;

(5) An individual who is pregnant or parenting;

(6) An individual with a disability;

(7) An individual who requires additional assistance to enter or complete an educational program or to secure or hold employment. (WIOA secs. 3(27) and 129(a)(1)(C))

§ 681.230 What does "school" refer to in the "not attending or attending any school" in the

out-of-school and in-school definitions?

In general, the applicable State law for secondary and post-secondary institutions defines "school." However, for purposes of WIOA, the Department does not consider providers of Adult Education under title II of WIOA, YouthBuild programs, and Job Corps programs to be schools. Therefore, WIOA youth programs may consider a youth to be out-of-school youth for purposes of WIOA youth program eligibility if they are attending Adult Education provided under title II of WIOA, YouthBuild, or Job Corps.

§ 681.240 When do local youth programs verify dropout status, particular for youth

attending alternative schools?

Local WIOA youth programs must verify a youth's dropout status at the time of WIOA youth program enrollment. A youth attending an alternative school at the time of enrollment is not a dropout. States must define "alternative school" in their State Plan. The definition should be consistent with their State Education Agency definition, if available. An individual who is out-of-school at the time of enrollment and subsequently placed in an alternative school or any

school, is an out-of-school youth for the purposes of the 75 percent expenditure requirement for out-of-school youth.

§ 681.250 Who does the low-income eligibility requirement apply to?

(a) For OSY, only those youth who are the recipient of a secondary school diploma or its recognized equivalent and are either basic skills deficient or an English language learner and youth who require additional assistance to enter or complete an educational program or to secure or hold employment must be low-income. All other OSY meeting OSY eligibility under § 681.210(c)(1), (2) and (4) through (7) are not required to be low-income. (WIOA secs. 129(a)(1)(iii)(I)-(II) and 129(a)(1)(iii)(IV)-(VII))

(b) All ISY must be low-income to meet the ISY eligibility criteria, except those that fall under the low-income exception.

(c) WIOA allows a low-income exception where five percent of all WIOA youth participants may be participants who ordinarily would be required to be low-income for eligibility purposes and who meet all other eligibility criteria for WIOA youth except the low- income criteria. A program must calculate the five percent based on the percent of all youth served by the program in the local area's WIOA youth program in a given program year.

(d) In addition to the criteria in the definition of "low-income individual" in WIOA sec. 3(36), a youth is low-income if he or she receives or is eligible to receive a free or reduced price lunch under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq. or if she or her lives in a high-poverty area.

§ 681.260 How does the Department define "high poverty area" for the purposes of the

special rule for low-income youth in Workforce Innovation and Opportunity Act?

A youth who lives in a high poverty area is automatically considered to be a low-income individual. A high-poverty area is a Census tract, a set of contiguous Census tracts, Indian Reservation, tribal land, or Native Alaskan Village or county that has a poverty rate of at least 30 percent as set every 5 years using American Community Survey 5-Year data.

§ 681.270 May a local program use eligibility for free or reduced price lunches under the

National School Lunch Program as a substitute for the income eligibility criteria under title

I of the Workforce Innovation and Opportunity Act?

Yes, WIOA sec. 3(36) defines a low-income individual to include an individual who receives (or is eligible to receive) a free or reduced price lunch under the Richard B. Russell National School Lunch Act.

§ 681.280 Is a youth with a disability eligible for youth services under the Act if their

family income exceeds the income eligibility criteria?

Yes, for an individual with a disability, income level for eligibility purposes is based on the individual's own income rather than his or her family's income. WIOA sec. 3(36)(A)(vi) states that an individual with a disability whose own income meets the low-income definition in clause (ii) (income that does not exceed the higher of the poverty line or 70 percent of the lower living standard income level), but who is a member of a family whose income exceeds this income requirement is eligible for youth services.

§ 681.290 How does the Department define the "basic skills deficient" criterion in this

part?

(a) As defined in § 681.210(c)(3), a youth is "basic skills deficient" if they:

(1) Have English reading, writing, or computing skills at or below the 8th grade level on a generally accepted standardized test; or

(2) Are unable to compute or solve problems, or read, write, or speak English at a level necessary to function on the job, in the individual's family, or in society. (WIOA sec. 3(5))

(b) The State or Local Board must establish its policy on paragraph (a)(2) of this section in its respective State or local plan.

(c) In assessing basic skills, local programs must use assessment instruments that are valid and appropriate for the target population, and must provide reasonable accommodation in the assessment process, if necessary, for people with disabilities.

§ 681.300 How does the Department define the "requires additional assistance to complete

an educational program, or to secure and hold employment" criterion in this part?

As defined in § 681.200(c)(8), either the State or the local level may establish definitions and eligibility documentation requirements for the "requires additional assistance to complete an educational program, or to secure and hold employment" criterion of § 681.200(c)(8). In cases where the State Board establishes State policy on this criterion, the State Board must include the definition in the State Plan. In cases where the State Board does not establish a policy, the Local Board must establish a policy in their local plan if using this criterion.

§ 681.310 Must youth participants enroll to participate in the youth program?

(a)) Yes, to participate in youth programs, participants must enroll in the WIOA

youth program.

(b) Enrollment in this case requires:

(1) The collection of information to support an eligibility determination; and

(2) Participation in any of the fourteen WIOA youth program elements.

Subpart C—Youth Program Design, Elements, and Parameters

§ 681.400 What is the process used to select eligible youth providers?

(a) As provided in WIOA sec. 123, the Local Board must identify eligible providers of youth workforce investment activities in the local area by awarding grants or contracts on a competitive basis, except as provided below in paragraph (a)(3) of this section, based on the recommendation of the youth standing committee, if they choose to establish a standing youth committee and assign it that function. If such a committee is not established for the local area, this responsibility falls to the Local Board.

(1) Local areas must include the criteria used to identify youth providers in the State Plan (including such quality criteria established by the Governor for a training program that leads to a

recognized post-secondary credential) taking into consideration the ability of the provider to meet the performance accountability measures based on primary indicators of performance for youth programs.

(2) Local areas must conduct a full and open competition to secure youth service providers according to the Federal procurement guidelines at 2 CFR parts 200 and 2900, in addition to applicable State and local procurement laws.

(3) Where the Local Board determines there is an insufficient number of eligible providers of youth workforce investment activities in the local area, such as a rural area, the Local Board may award grants or contracts on a sole source basis (WIOA sec. 123(b)).

(b) The requirement in WIOA sec. 123 that eligible providers of youth services be selected by awarding a grant or contract on a competitive basis does not apply to the design framework services when these services are more appropriately provided by the grant recipient/fiscal agent. Design framework services include intake, objective assessments and the development of individual service strategy, case management, and follow-up services.

§ 681.410 Does the requirement that a State and local area expend at least 75 percent of

youth funds to provide services to out-of-school youth apply to all youth funds?

Yes. The 75 percent requirement applies to both statewide youth activities funds and local youth funds with two exceptions.

(a) Only statewide funds spent on direct services to youth are subject to the OSY expenditure requirement. Funds spent on statewide youth activities that do not provide direct services to youth, such as most of the required statewide youth activities listed in WIOA sec. 129(b)(1), are not subject to the OSY expenditure requirement. For example, administrative costs, monitoring, and technical assistance are not subject to OSY expenditure requirement; while funds spent on direct services to youth such as statewide demonstration projects, are subject to the OSY expenditure requirement.

(b) For a State that receives a small State minimum allotment under WIOA sec. 127(b)(1)(C)(iv)(II) or WIOA sec. 132(b)(1)(B)(iv)(II), the State may submit a request to the Secretary to decrease the percentage to a percentage not less than 50 percent for a local area in the State, and the Secretary may approve such a request for that program year, if the State meets the following requirements:

(1) After an analysis of the in-school youth and out-of-school youth populations in the local area, the State determines that the local area will be unable to use at least 75 percent of the local area WIOA youth funds to serve out-of-school youth due to a low number of out-of-school youth; and

(2) The State submits to the Secretary, for the local area, a request including a proposed percentage decreased to not less than 50 percent to provide workforce investment activities for out-of-school youth.

(c) In the exercise of the discretion afforded by WIOA sec. 129(a)(4) the Secretary has determined that requests to decrease the percentage of funds used to provide activities to OSY will not be granted to States based on their having received 90 percent of the allotment percentage for the preceding year. Therefore, when the Secretary receives such a request from a State based on having received 90 percent of the allotment percentage for the preceding year, the request will be denied

without the Secretary exercising further discretion.

(d) For local area funds, the administrative costs of carrying out local workforce investment activities described in WIOA sec. 128(b)(4) are not subject to the OSY expenditure requirement. All other local area youth funds beyond the administrative costs are subject to the OSY expenditure requirement.

§ 681.420 How must Local Boards design Workforce Innovation and Opportunity Act

youth programs?

(a) The design framework services of local youth programs must:

(1) Provide for an objective assessment of each youth participant that meets the requirements of WIOA sec. 129(c)(1)(A), and includes a review of the academic and occupational skill levels, as well as the service needs, of each youth for the purpose of identifying appropriate services and career pathways for participants and informing the individual service strategy;

(2) Develop, and update as needed, an individual service strategy for each youth participant that is directly linked to one or more indicators of performance described in WIOA sec. 116(b)(2)(A)(ii), that identifies appropriate career pathways that include education and employment goals, that considers career planning and the results of the objective assessment and

that prescribes achievement objectives and services for the participant; and

(3) Provides case management of youth participants, including follow-up services.

(b) The local plan must describe the design framework for youth programs in the local area, and how the fourteen program elements required in § 681.460 are to be made available within that framework.

(c) Local Boards must ensure appropriate links to entities that will foster the participation of eligible local area youth. Such links may include connections to:

(1) Local area justice and law enforcement officials;

(2) Local public housing authorities;

(3) Local education agencies;

(4) Local human service agencies;

(5) WIOA title II adult education providers;

(6) Local disability-serving agencies and providers and health and mental health

providers;

(7) Job Corps representatives; and

(8) Representatives of other area youth initiatives, such as YouthBuild, and including those that serve homeless youth and other public and private youth initiatives.

(d) Local Boards must ensure that WIOA youth service providers meet the referral requirements in WIOA sec. 129(c)(3)(A) for all youth participants, including:

(1) Providing these participants with information about the full array of applicable or appropriate services available through the Local Board or other eligible providers, or one-stop partners; and

(2) Referring these participants to appropriate training and educational programs that

have the capacity to serve them either on a sequential or concurrent basis.

(e) If a youth applies for enrollment in a program of workforce investment activities and either does not meet the enrollment requirements for that program or cannot be served by that program, the eligible provider of that program must ensure that the youth is referred for further assessment, if necessary, or referred to appropriate programs to meet the skills and training needs of the youth.

(f) In order to meet the basic skills and training needs of applicants who do not meet the eligibility requirements of a particular program or who cannot be served by the program, each youth provider must ensure that these youth are referred:

(1) For further assessment, as necessary, and

(2) To appropriate programs, in accordance with paragraph (d)(2) of this section. (WIOA sec. 129(c)(3)(B))

(g) Local Boards must ensure that parents, youth participants, and other members of the community with experience relating to youth programs are actively involved in both the design and implementation of its youth programs. (WIOA sec. 129(c)(3)(C))

(h) The objective assessment required under paragraph (a)(1) of this section or the individual service strategy required under paragraph (a)(2) of this section is not required if the program provider determines that it is appropriate to use a recent objective assessment or individual service strategy that was developed under another education or training program. (WIOA sec. 129(c)(1)(A))

(i) The Local Board may implement a pay-for-performance contract strategy for program elements described at § 681.460, for which the Local Board may reserve and use not more than 10 percent of the total funds allocated to the local area under WIOA sec. 128(b). For additional rules on pay-for-performance contracts see § 683.500.

§ 681.430 May youth participate in both the Workforce Innovation and Opportunity Act

youth and adult programs concurrently, and how do local program operators track

concurrent enrollment in the Workforce Innovation and Opportunity Act youth and adult

programs?

(a)) Yes, individuals who meet the respective program eligibility requirements may participate in adult and youth programs concurrently. Such individuals must be eligible under the youth or adult eligibility criteria applicable to the services received. Local program operators may determine, for these individuals, the appropriate level and balance of services under the youth and adult programs.

(b) Local program operators must identify and track the funding streams which pay the costs of services provided to individuals who are participating in youth and adult programs concurrently, and ensure no duplication of services.

(c) Individuals who meet the respective program eligibility requirements for WIOA youth title I and title II may participate in title I youth and title II concurrently.

§ 681.440 How does a local youth program determine if an 18 to 24 year old is enrolled in

the Workforce Innovation and Opportunity Act youth program or the Workforce

Innovation and Opportunity Act adult program?

A local program should determine the appropriate program for the participant based on the service needs of the participant and if the participant is career-ready based on an objective assessment of their occupational skills, prior work experience, employability, and participants needs as required in WIOA sec. 129(c)(1)(A).

§ 681.450 For how long must a local Workforce Innovation and Opportunity Act youth

program serve a participant?

Local youth programs must provide service to a participant for the amount of time necessary to ensure successful preparation to enter post-secondary education and/or unsubsidized employment. While there is no minimum or maximum time a youth can participate in the WIOA youth program, programs must link participation to the individual service strategy and not the timing of youth service provider contracts or program years.

§ 681.460 What services must local programs offer to youth participants?

(a) Local programs must make each of the following 14 services available to youth participants (WIOA sec. 129(c)(2)):

(1) Tutoring, study skills training, instruction and evidence-based dropout prevention and recovery strategies that lead to completion of the requirements for a secondary school diploma or its recognized equivalent (including a recognized certificate of attendance or similar document for

individuals with disabilities) or for a recognized post-secondary credential;

(2) Alternative secondary school services, or dropout recovery services, as appropriate;

(3) Paid and unpaid work experiences that have academic and occupational education as a component of the work experience, which may include the following types of work experiences:

(i) Summer employment opportunities and other employment opportunities available throughout the school year;

(ii) Pre-apprenticeship programs;

(iii) Internships and job shadowing; and

(iv) On-the-job training opportunities;

(4) Occupational skill training, which includes priority consideration for training programs that lead to recognized post-secondary credentials that align with in-demand industry sectors or occupations in the local area involved, if the Local Board determines that the programs meet the quality criteria described in WIOA sec. 123;

(5) Education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster;

(6) Leadership development opportunities, including community service and peer-

centered activities encouraging responsibility and other positive social and civic behaviors;

(7) Supportive services, including the services listed in § 681.570;

(8) Adult mentoring for a duration of at least 12 months, that may occur both during and after program participation;

(9) Follow-up services for not less than 12 months after the completion of participation, as provided in § 681.580;

(10) Comprehensive guidance and counseling, which may include drug and alcohol abuse counseling, as well as referrals to counseling, as appropriate to the needs of the individual youth;

(11) Financial literacy education;

(12) Entrepreneurial skills training;

(13) Services that provide labor market and employment information about in-demand industry sectors or occupations available in the local area, such as career awareness, career counseling, and career exploration services; and

(14) Activities that help youth prepare for and transition to post-secondary education and training.

(b) Local programs have the discretion to determine what specific program services a

youth participant receives, based on each participant's objective assessment and individual service strategy. Local programs are not required to provide every program service to each participant.

§ 681.470 Does the Department require local programs to use WIOA funds for each of the

14 program elements?

No. The Department does not require local programs to use WIOA youth funds for each of the program elements. Local programs may leverage partner resources to provide some of the readily available program elements. However, the local area must ensure that if a program element is not funded with WIOA title I youth funds, the local program has an agreement in place with a partner organization to ensure that the program element will be offered. The Local Board must ensure that the program element is closely connected and coordinated with the WIOA youth program.

§ 681.480 What is a pre-apprenticeship program?

A pre-apprenticeship is a program or set of strategies designed to prepare individuals to enter and succeed in a registered apprenticeship program and has a documented partnership with at least one, if not more, registered apprenticeship program(s).

§ 681.490 What is adult mentoring?

(a) Adult mentoring for youth must:

(1) Last at least 12 months and may take place both during the program and following exit from the program;

(2) Be a formal relationship between a youth participant and an adult mentor that includes structured activities where the mentor offers guidance, support, and encouragement to develop the competence and character of the mentee;

(3) Include a mentor who is an adult other than the assigned youth case manager; and

(4) While group mentoring activities and mentoring through electronic means are allowable as part of the mentoring activities, at a minimum, the local youth program must match the youth with an individual mentor with whom the youth interacts on a face-to-face basis.

(b) Mentoring may include workplace mentoring where the local program matches a youth participant with an employer or employee of a company.

§ 681.500 What is financial literacy education?

The financial literacy education program element includes activities which:

(a)) Support the ability of participants to create budgets, initiate checking and savings

accounts at banks, and make informed financial decisions;

(b) Support participants in learning how to effectively manage spending, credit, and debt, including student loans, consumer credit, and credit cards;

(c) Teach participants about the significance of credit reports and credit scores; what their rights are regarding their credit and financial information; how to determine the accuracy of a credit report and how to correct inaccuracies; and how to improve or maintain good credit;

(d) Support a participant's ability to understand, evaluate, and compare financial products, services, and opportunities and to make informed financial decisions;

(e) Educate participants about identity theft, ways to protect themselves from identify theft, and how to resolve cases of identity theft and in other ways understand their rights and protections related to personal identity and financial data;

(f) Support activities that address the particular financial literacy needs of non-English speakers, including providing the support through the development and distribution of multilingual financial literacy and education materials;

(g) Provide financial education that is age appropriate, timely, and provides opportunities to put lessons into practice, such as by access to safe and affordable financial products that enable money management and savings; and

(h) Implement other approaches to help participants gain the knowledge, skills, and confidence to make informed financial decisions that enable them to attain greater financial health and stability by using high quality, age-appropriate, and relevant strategies and channels, including, where possible, timely and customized information, guidance, tools, and instruction.

§ 681.510 What is comprehensive guidance and counseling?

Comprehensive guidance and counseling provides individualized counseling to participants. This includes career and academic counseling, drug and alcohol abuse counseling, mental health counseling, and referral to partner programs, as appropriate. (WIOA sec.

129(c)(1)(C)(J)) When referring participants to necessary counseling that cannot be provided by the local youth program or its service providers, the local youth program must coordinate with the organization it refers to in order to ensure continuity of service.

§ 681.520 What are leadership development opportunities?

Leadership development opportunities are opportunities that encourage responsibility, confidence, employability, self-determination and other positive social behaviors such as:

(a) Exposure to post-secondary educational possibilities;

(b) Community and service learning projects;

(c) Peer-centered activities, including peer mentoring and tutoring;

(d) Organizational and team work training, including team leadership training;

(e) Training in decision-making, including determining priorities and problem solving;

(f)) Citizenship training, including life skills training such as parenting and work behavior training;

(g) Civic engagement activities which promote the quality of life in a community; and

(h) Other leadership activities that place youth in a leadership role such as serving on youth leadership committees, such as a Standing Youth Committee. (WIOA sec. 129(c)(2)(F))

§ 681.530 What are positive social and civic behaviors?

Positive social and civic behaviors are outcomes of leadership opportunities, which are incorporated by local programs as part of their menu of services. Positive social and civic behaviors focus on areas that may include the following:

(a)) Positive attitudinal development;

(b) Self-esteem building;

(c) Openness to work with individuals from diverse backgrounds;

(d) Maintaining healthy lifestyles, including being alcohol- and drug-free;

(e)) Maintaining positive social relationships with responsible adults and peers, and contributing to the well-being of one's community, including voting;

(f)) Maintaining a commitment to learning and academic success;

(g) Avoiding delinquency;

(h) Postponing parenting and responsible parenting, including child support education;

(i) Positive job attitudes and work skills; and

(j) Keeping informed in community affairs and current events.

§ 681.540 What is occupational skills training?

(a) The Department defines occupational skills training as an organized program of study that provides specific vocational skills that lead to proficiency in performing actual tasks and

technical functions required by certain occupational fields at entry, intermediate, or advanced levels. Local areas must give priority consideration to training programs that lead to recognized post-secondary credentials that align with in-demand industry sectors or occupations in the local area. Such training must:

(1) be outcome-oriented and focused on an occupational goal specified in the individual service strategy;

(2) be of sufficient duration to impart the skills needed to meet the occupational goal; and

(3) result in attainment of a recognized post-secondary credential.

(b) The chosen occupational skills training must meet the quality standards in WIOA sec. 123.

§ 681.550 Are Individual Training Accounts permitted for youth participants?

Yes. In order to enhance individual participant choice in their education and training plans and provide flexibility to service providers, the Department allows WIOA ITAs for out-of- school youth, ages 18 to 24 using WIOA youth funds when appropriate.

§ 681.560 What is entrepreneurial skills training and how is it taught?

Entrepreneurial skills training provides the basics of starting and operating a small business.

(a)) Such training must develop the skills associated with entrepreneurship. Such skills include, but are not limited to, the ability to:

(1) Take initiative;

(2) Creatively seek out and identify business opportunities;

(3) Develop budgets and forecast resource needs;

(4) Understand various options for acquiring capital and the trade-offs associated with each option; and

(5) Communicate effectively and market oneself and one's ideas.

(b) Approaches to teaching youth entrepreneurial skills include, but are not limited to, the following:

(1) Entrepreneurship education that provides an introduction to the values and basics of starting and running a business. Entrepreneurship education programs often guide youth through the development of a business plan and may also include simulations of business start-up and operation.

(2) Enterprise development which provides supports and services that incubate and help youth develop their own businesses. Enterprise development programs go beyond entrepreneurship education by helping youth access small loans or grants that are needed to begin business operation and by providing more individualized attention to the development of viable business ideas.

(3) Experiential programs that provide youth with experience in the day-to-day operation of a business. These programs may involve the development of a youth-run business that young people participating in the program work in and manage. Or, they may facilitate placement in apprentice or internship positions with adult entrepreneurs in the community.

§ 681.570 What are supportive services for youth?

Supportive services for youth, as defined in WIOA sec. 3(59), are services that enable an individual to participate in WIOA activities. These services include, but are not limited to, the following:

(a) Linkages to community services;

(b) Assistance with transportation;

(c) Assistance with child care and dependent care;

(d) Assistance with housing;

(e)) Needs-related payments;

(f) Assistance with educational testing;

(g) Reasonable accommodations for youth with disabilities;

(h) Referrals to health care; and

(i) Assistance with uniforms or other appropriate work attire and work-related tools, including such items as eye glasses and protective eye gear.

§ 681.580 What are follow-up services for youth?

(a) Follow-up services are critical services provided following a youth's exit from the program to help ensure the youth is successful in employment and/or post-secondary education and training.

(b) Follow-up services for youth may include:

(1) The leadership development and supportive service activities listed in §§ 681.520 and 681.570;

(2) Regular contact with a youth participant's employer, including assistance in addressing work-related problems that arise;

(3) Assistance in securing better paying jobs, career pathway development, and further education or training;

(4) Work-related peer support groups;

(5) Adult mentoring; and/or

(6) Services necessary to ensure the success of youth participants in employment and/or post-secondary education.

(c) All youth participants must receive some form of follow-up services for a minimum duration of 12 months. Follow-up services may be provided beyond 12 months at the State or Local Board's discretion. The types of services provided and the duration of services must be determined based on the needs of the individual and therefore, the type and intensity of follow- up services may differ for each participant. However, follow-up services must include more than only a contact attempted or made for securing documentation in order to report a performance outcome. (WIOA sec. 129(c)(2)(I))

§ 681.590 What is the work experience priority?

Local youth programs must expend not less than 20 percent of the funds allocated to them to provide in-school youth and out-of-school youth with paid and unpaid work experiences that fall under the categories listed in § 681.460(a)(3) and further defined in § 681.600. (WIOA sec. 129(c)(4))

§ 681.600 What are work experiences?

(a)) Work experiences are a planned, structured learning experience that takes place in a

workplace for a limited period of time. Work experience may be paid or unpaid, as appropriate. A work experience may take place in the private for-profit sector, the non-profit sector, or the public sector. Labor standards apply in any work experience where an employee/employer relationship, as defined by the Fair Labor Standards Act or applicable State law, exists. Work experiences provide the youth participant with opportunities for career exploration and skill development.

(b) Work experiences must include academic and occupational education.

(c) The types of work experiences include the following categories:

(1) Summer employment opportunities and other employment opportunities available throughout the school year;

(2) Pre-apprenticeship programs;

(3) Internships and job shadowing; and

(4) On-the-job training opportunities as defined in WIOA sec. 3(44) and in § 680.700.

§ 681.610 How will local Workforce Innovation and Opportunity Act youth programs

track the work experience priority?

Local WIOA youth programs must track program funds spent on paid and unpaid work experiences, including wages and staff costs for the development and management of work experiences, and report such expenditures as part of the local WIOA youth financial reporting. The percentage of funds spent on work experience is calculated based on the total local area youth funds expended for work experience rather than calculated separately for in-school and out-of-school youth. Local area administrative costs are not subject to the 20 percent minimum work experience expenditure requirement.

§ 681.620 Does the Workforce Innovation and Opportunity Act require Local Boards to

offer summer employment opportunities in the local youth program?

No, WIOA does not require Local Boards to offer summer youth employment opportunities as summer employment is no longer its own program element under WIOA. However, WIOA does require Local Boards to offer work experience opportunities using at least 20 percent of their funding, which may include summer employment.

§ 681.630 How are summer employment opportunities administered?

Summer employment opportunities are a component of the work experience program

element. Providers administering the work experience program element must be selected by the Local Board by awarding a grant or contract on a competitive basis as described in WIOA sec. 123, based on criteria contained in the State Plan. However, the summer employment administrator does not need to select the employers who are providing the employment opportunities through a competitive process.

§ 681.640 What does education offered concurrently with and in the same context as

workforce preparation activities and training for a specific occupation or occupational

cluster mean?

This program element reflects the integrated education and training model and requires integrated education and training to occur concurrently and contextually with workforce preparation activities and workforce training. This program element describes how workforce preparations activities, basic academic skills, and hands-on occupational skills training are to be taught within the same time frame and connected to training in a specific occupation, occupational cluster, or career pathway. (WIOA sec. 129(c)(2)(E))

§ 681.650 Does the Department allow incentive payments for youth participants?

Yes, the Department allows incentive payments to youth participants for recognition and achievement directly tied to training activities and work experiences. The local program must have written policies and procedures in place governing the awarding of incentives and must ensure that such incentive payments are:

(a) Tied to the goals of the specific program;

(b) Outlined in writing before the commencement of the program that may provide incentive payments;

(c) Align with the local program's organizational policies; and

(d) Accord with the requirements contained in 2 CFR 200.

§ 681.660 How can parents, youth, and other members of the community get involved in

the design and implementation of local youth programs?

Local Boards and programs must provide opportunities for parents, participants, and other members of the community with experience working with youth to be involved in the design and implementation of youth programs. Parents, youth participants, and other members of the community can get involved in a number of ways including serving on youth standing committees, if

they exist and they are appointed by the Local Board. They can also get involved by serving as mentors, serving as tutors, and providing input into the design and implementation of other program design elements. Local Boards must also make opportunities available to successful participants to volunteer to help participants as mentors, tutors or in other activities.

Subpart D—One-Stop Services to Youth

§ 681.700 What is the connection between the youth program and the one-stop service delivery system?

(a) WIOA sec. 121(b)(1)(B)(i) requires that the youth program function as a required one-stop partner and fulfill the roles and responsibilities of a one-stop partner described in WIOA sec. 121(b)(1)(A).

(b) In addition to the provisions of 20 CFR part 678, connections between the youth program and the one-stop system may include those that facilitate:

(1) The coordination and provision of youth activities;

(2) Linkages to the job market and employers;

(3) Access for eligible youth to the information and services required in § 681.460;

(4) Services for non-eligible youth such as basic labor exchange services, other self-service activities such as job searches, career exploration, use of career center resources, and referral as appropriate; and

(5) Other activities described in WIOA secs. 129(b)-(c).

(c) Local Boards must either collocate WIOA youth program staff at one-stop centers and/or ensure one-stop centers and staff are equipped to advise youth in order to increase youth access to services and connect youth to the program that best aligns with their needs.

§ 681.710 Do Local Boards have the flexibility to offer services to area youth who are not

eligible under the youth program through the one-stop centers?

Yes. However, Local Boards must ensure one-stop centers fund services for non-eligible youth through programs authorized to provide services to such youth. For example, one-stop

centers may provide basic labor exchange services under the Wagner-Peyser Act to any youth.

9. Add part 682 to read as follows:

PART 682 – STATEWIDE ACTIVITIES UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

Subpart A—General Description

Sec.

682.100 What are the statewide employment and training activities under title I of the Workforce Innovation and Opportunity Act?

682.110 How are statewide employment and training activities funded?

Subpart B—Required and Allowable Statewide Employment and Training Activities

Sec.

682.200 What are required statewide employment and training activities?

682.210 What are allowable statewide employment and training activities?

682.220 What are States' responsibilities in regard to evaluations and research?

Subpart C—Rapid Response Activities

Sec.

682.300 What is rapid response, and what is its purpose?

682.310 Who is responsible for carrying out rapid response activities?

682.320 What is layoff aversion, and what are appropriate layoff aversion strategies and activities?

682.330 What rapid response activities are required?

682.340 May other activities be undertaken as part of rapid response?

682.350 What is meant by "provision of additional assistance" in the Workforce Innovation and Opportunity Act?

682.360 What rapid response, layoff aversion, or other information will States be required to report to the Employment and Training Administration?

682.370 What are "allowable statewide activities" for which rapid response funds remaining unspent at the end of the year of obligation may be recaptured by the State?

Authority: Secs. 129, 134, 189, 503, Pub. L. 113-128, 128 Stat. 1425 (Jul. 22, 2014).

Subpart A—General Description

§ 682.100 What are the statewide employment and training activities under title I of the Workforce Innovation and Opportunity Act?

Statewide employment and training activities include those activities for adults and dislocated workers, as described in WIOA sec. 134(a), and statewide youth activities, as described in WIOA sec. 129(b). They include both required and allowable activities. In accordance with the requirements of this subpart, the State may develop policies and strategies for use of statewide employment and training funds. Descriptions of these policies and strategies must be included in the State Plan.

§ 682.110 How are statewide employment and training activities funded?

(a) Except for the statewide rapid response activities described in paragraph (c) of this section, statewide employment and training activities are supported by funds reserved by the Governor under WIOA sec. 128(a).

(b) Funds reserved by the Governor for statewide workforce investment activities may be combined and used for any of the activities authorized in WIOA sec. 129(b), 134(a)(2)(B), or

134(a)(3)(A) (which are described in §§ 682.200 and 682.210), regardless of whether the funds were allotted through the youth, adult, or dislocated worker funding streams.

(c) Funds for statewide rapid response activities are reserved under WIOA sec. 133(a)(2) and may be used to provide the activities authorized at WIOA sec. 134(a)(2)(A) (which are described in §§ 682.310 through 682.330). (WIOA secs. 129(b), 133(a)(2), 134(a)(2)(A), and 134(a)(3)(A))

Subpart B—Required and Allowable Statewide Employment and Training Activities

§ 682.200 What are required statewide employment and training activities?

Required statewide employment and training activities are:

(a)) Required rapid response activities, as described in § 682.310;

(b) Disseminating by various means, as provided by WIOA sec. 134(a)(2)(B):

(1) The State list of eligible providers of training services (including those providing

non-traditional training services), for adults and dislocated workers and eligible providers of apprenticeship programs;

(2) Information identifying eligible providers of on-the-job training (OJT), customized training, incumbent worker training (see § 680.780 of this chapter), internships, paid or unpaid work experience opportunities (see § 680.170 of this chapter) and transitional jobs (see § 680.830 of this chapter);

(3) Information on effective outreach and partnerships with business;

(4) Information on effective service delivery strategies and promising practices to serve workers and job seekers;

(5) Performance information and information on the cost of attendance, including tuition and fees as described in § 680.490 of this chapter;

(6) A list of eligible providers of youth activities as described in WIOA sec. 123; and

(7) Information of physical and programmatic accessibility for individuals with disabilities. (WIOA sec. 134(a)(2)(b)(v)(VI)).

(c)) States must assure that the information listed in paragraphs (b)(1) through (b)(7) of this section is widely available;

(d) Conducting evaluations (WIOA sec. 134(a)(2)(B)(vi)) under WIOA sec. 116(e), consistent with the requirements found under § 682.220.

(e)) Providing technical assistance to local areas in carrying out activities described in the State Plan, including coordination and alignment of data systems used to carry out the requirements of this Act;

(f) Assisting local areas, one-stop operators, one-stop partners, and eligible providers, including development of staff, including staff training to provide opportunities for individuals with barriers to employment to enter in-demand industry sectors or occupations and nontraditional occupations, and the development of exemplary program activities. (WIOA sec. 134(a)(2)(B)(IV));

(g) Assisting local areas for carrying out the regional planning and service delivery efforts required under WIOA sec. 106(c);

(h) Assisting local areas by providing information on and support for the effective development, convening, and implementation of industry and sector partnerships;

(i) Providing technical assistance to local areas that fail to meet local performance accountability measure described in 20 CFR 677.205 (WIOA secs. 129(b)(2)(E) and 134(a)(2)(B)(IV));

(j) Carrying out monitoring and oversight of activities for services to youth, adults, and dislocated workers under WIOA title I, and which may include a review comparing the services provided to male and female youth (WIOA sec. 129(b)(1)(E));

(k) Providing additional assistance to local areas that have a high concentration of eligible youth (WIOA sec. 129(b)(1)(F)); and

(l) Operating a fiscal and management accountability information system, based on guidelines established by the Secretary (WIOA secs. 129(b)(1)((D)), 134(a)(2)(B)(iii)).

§ 682.210 What are allowable statewide employment and training activities?

Allowable statewide employment and training activities include:

(a)) State administration of the adult, dislocated worker and youth workforce investment activities, consistent with the five percent administrative cost limitation at WIOA sec. 134(a)(3)(B) and § 683.205(a)(1) of this chapter;

(b) Developing and implementing innovative programs and strategies designed to meet the needs of all employers (including small employers) in the State, including the programs and strategies referenced in WIOA sec. 134(a)(3)(A)(i);

(c)) Developing strategies for serving individuals with barriers to employment, and for coordinating programs and services among one-stop partners (WIOA sec. 134(a)(3)(A)(ii));

(d) Development or identification of education and training programs that have the characteristics referenced in WIOA sec. 134(a)(3)(A)(iii);

(e) Implementing programs to increase the number of individuals training for and placed in non-traditional employment (WIOA sec. 134(a)(3)(A)(iv));

(f)) Conducting research and demonstrations related to meeting the employment and education needs of youth, adults and dislocated workers (WIOA sec. 134(a)(3)(A)(ix));

(g) Supporting the development of alternative, evidence-based programs, and other activities that enhance the choices available to eligible youth and which encourage youth to reenter and complete secondary education, enroll in post-secondary education and advanced training,

progress through a career pathway, and enter into unsubsidized employment that leads to economic self-sufficiency (WIOA sec. 129(b)(2)(B);

(h) Supporting the provision of career services in the one-stop delivery system in the State as described in § 678.430 and WIOA secs. 129(b)(2)(C) and 134(c)(2);

(i) Supporting financial literacy activities as described in § 681.500 and WIOA sec. 129(b)(2)(D);

(j) Providing incentive grants to local areas for performance by the local areas on local performance accountability measures (WIOA sec. 134(a)(3)(A)(xi));

(k) Providing technical assistance to Local Boards, chief elected officials, one-stop operators, one-stop partners, and eligible providers in local areas on the development of exemplary program activities and on the provision of technology to facilitate remote access to services provided through the one-stop delivery system in the State (WIOA sec. 129(b)(2)(E));

(l) Providing technical assistance to local areas that are implementing WIOA Pay-for-Performance contract strategies and conducting evaluations of such strategies. Technical assistance may include providing assistance with data collections, meeting data entry requirements, and identifying level of performance (WIOA sec. 134(a)(3)(A)(xiv));

(m) Carrying out activities to facilitate remote access to training services provided through the one-stop delivery system (WIOA sec. 134(a)(3)(A)(v));

(n) Activities that include:

(1) Activities to improve coordination of workforce investment activities, with economic

development activities (WIOA sec. 134(a)(3)(A)(viii)(I)); and

(2) Activities to improve coordination of employment and training activities with child support services and activities, cooperative extension programs carried out by the Department of Agriculture, programs carried out by local areas for individuals with disabilities (including the programs identified in WIOA sec. 134(a)(3)(A)(viii)(II)(cc)), adult education and literacy activities including those provided by public libraries, activities in the correction systems to assist ex-offenders in reentering the workforce and financial literacy activities (WIOA sec. 134(a)(3)(A)(viii)(II)); and

(3) Developing and disseminating workforce and labor market information (WIOA sec. 134(a)(3)(A)(viii)(III)).

(o) Implementation of promising practices for workers and businesses as described in WIOA sec. 134(a)(3)(A)(x);

(p) Adopting, calculating, or commissioning for approval an economic self-sufficiency standard for the State that specifies the income needs of families, by family size, the number and ages of children in the family, and sub-State geographical considerations (WIOA sec. 134(a)(3)(A)(xii));

(q) Developing and disseminating common intake procedures and related items, including registration processes, across core and partner programs (WIOA sec. 134(A)(3)(A)(xiii)); and

(r)) Coordinating activities with the child welfare system to facilitate provision of services for children and youth who are eligible for assistance under sec. 477 of the Social Security Act (WIOA sec. 134(a)(3)(A)(vii)).

§ 682.220 What are States' responsibilities in regard to evaluations and research?

(a)(1) As required by § 682.200(d), States must use funds reserved by the Governor for statewide activities to conduct evaluations of activities under the WIOA title I core programs, in order to promote continuous improvement; test innovative services and strategies, and achieve high levels of performance and outcomes;

(2) States may use the funds reserved by the Governor for statewide activities (under § 682.210(f)), to conduct research and demonstration projects relating to the education and employment needs of youth, adults, and dislocated worker programs;

(3) States may use funds from any WIOA title II – IV core program to conduct evaluations and other research, as determined through the processes associated with paragraph (b)(1) of this section;

(b) Evaluations and research projects funded in whole or in part with WIOA title I funds

must:

(1) Be coordinated with and designed in conjunction with State and Local Boards and with State agencies responsible for the administration of all core programs;

(2) When appropriate, include analysis of customer feedback and outcome and process measures in the statewide workforce development system;

(3) Use designs that employ the most rigorous analytical and statistical methods that are

reasonably feasible, such as the use of control groups; and

(4) To the extent feasible, be coordinated with the evaluations provided for by the Secretary of Labor and the Secretary of Education under WIOA sec. 169 (regarding title I programs and other employment-related programs), WIOA sec. 242(c)(2)(D) (regarding Adult Education), secs. 12(a)(5), 14, and 107 of the Rehabilitation Act of 1973 (29 U.S.C. 709(a)(5), 711, 727) [applied with respect to programs carried out under title I of that Act (29 U.S.C. 720 et seq.)] and the investigations provided by the Secretary of Labor under sec. 10(b) of the Wagner- Peyser Act [29 U.S.C. 49i(b)].

(c)) States must annually prepare, submit to the State Board and Local Boards in the State, and make available to the public (including by electronic means), reports containing the results of the evaluations and other research described in paragraph (a) of this section.

(d) States must cooperate, to the extent practicable, in evaluations and related research projects conducted by the Secretaries of Labor and Education or their agents under sec. 116(e)(4) of WIOA. Such cooperation must, at a minimum, meet the following requirements:

(1) The timely provision of:

(i) Data, in accordance with appropriate privacy protections established by the Secretary of Labor;

(ii) Responses to surveys;

(iii) Site visits; and

(iv) Data and survey responses from local subgrantees and State and Local Boards, and

assuring that subgrantees and boards allow timely site visits**.**

(2) Encouraging other one-stop partners at the local level to cooperate in timely provision of data, survey responses and site visits as listed in paragraphs (f)(1)(a)–(c) of this section.

(3) If a State determines that timely cooperation in data provision as described in paragraph (d)(1) of this section is not practicable, the Governor must inform the Secretary in writing and explain the reasons why it is not practicable. In such circumstances, the State must cooperate with the Department in developing a plan or strategy to mitigate or overcome the problems preventing timely provision of data, survey responses, and site visits.

(e)) States may use or combine funds, consistent with Federal and State law, regulation and guidance, from other public or private sources, to conduct evaluations, research, and demonstration projects relating to activities under the WIOA title I – IV core programs.

Subpart C—Rapid Response Activities

§ 682.300 What is rapid response, and what is its purpose?

(a)) Rapid response is described in §§ 682.310 through 682.370, and encompasses the strategies and activities necessary to:

(1) Plan for and respond to as quickly as possible following either:

(i) An announcement of a closure or layoff; or,

(ii) Mass job dislocation resulting from a natural or other disaster; and

(2) Deliver services to enable dislocated workers to transition to new employment as quickly as possible.

(b) The purpose of rapid response is to promote economic recovery and vitality by developing an ongoing, comprehensive approach to identifying, planning for, responding to layoffs and dislocations, and preventing or minimizing their impacts on workers, businesses, and communities. A successful rapid response system includes:

(1) Informational and direct reemployment services for workers, including but not limited to information and support for filing unemployment insurance claims, information on the impacts of layoff on health coverage or other benefits, information on and referral to career services, reemployment-focused workshops and services, and training;

(2) Delivery of solutions to address the needs of businesses in transition, provided across the business lifecycle (expansion and contraction), including comprehensive business engagement and layoff aversion strategies and activities designed to prevent or minimize the duration of unemployment;

(3) Convening, brokering, and facilitating the connections, networks and partners to ensure the ability to provide assistance to dislocated workers and their families such as home heating assistance, legal aid, and financial advice; and

(4) Strategic planning, data gathering and analysis designed to anticipate, prepare for, and manage economic change.

§ 682.310 Who is responsible for carrying out rapid response activities?

(a)) Rapid response activities must be carried out by the State or an entity designated by the State, in conjunction with the Local Boards, chief elected officials, and other stakeholders, as provided by WIOA secs. 133(a)(2) and 134(a)(2)(A);

(b) States must establish and maintain a rapid response unit to carry out statewide rapid

response activities and to oversee rapid response activities undertaken by a designated State

entity, Local Board, or the chief elected officials for affected local areas, as provided under WIOA sec. 134(a)(2)(A)(i)(I).

§ 682.320 What is layoff aversion, and what are appropriate layoff aversion strategies and

activities?

(a) Layoff aversion consists of strategies and activities, including those provided in paragraph (b)(2) of this section and §§ 682.330 and 682.340, to prevent or minimize the duration of unemployment resulting from layoffs.,

(b) Layoff aversion activities may include:

(1) Providing assistance to employers in managing reductions in force, which may include early identification of firms at risk of layoffs, assessment of the needs of and options for at-risk firms, and the delivery of services to address these needs, as provided by WIOA sec. 134(d)(1)(A)(ix)(II)(cc);

(2) Ongoing engagement, partnership, and relationship-building activities with businesses in the community, in order to create an environment for successful layoff aversion efforts and to enable the provision of assistance to dislocated workers in obtaining reemployment as soon as possible;

(3) Funding feasibility studies to determine if a company's operations may be sustained through a buyout or other means to avoid or minimize layoffs;

(4) Developing and managing incumbent worker training programs or other worker up skilling approaches;

(5) Connecting companies to:

(i) Short-time compensation or other programs designed to prevent layoffs or to quickly reemploy dislocated workers, available under Unemployment Insurance programs;

(ii) Employer loan programs for employee skill upgrading; and

(iii) Other Federal, State and local resources as necessary to address other business needs that cannot be funded with resources provided under this title.

(6) Establishing linkages with economic development activities at the Federal, State and local levels, including Federal Department of Commerce programs and available State and local business retention and expansion activities;

(7) Partnering or contracting with business-focused organizations to assess risks to companies, propose strategies to address those risks, implement services, and measure impacts of services delivered;

(8) Conducting analyses of the suppliers of an affected company to assess their risks and vulnerabilities from a potential closing or shift in production of their major customer;

(9) Engaging in proactive measures to identify opportunities for potential economic transition and training needs in growing industry sectors or expanding businesses; and

(10) Connecting businesses and workers to short-term, on-the-job, or customized training programs and apprenticeships before or after layoff to help facilitate rapid reemployment.

§ 682.330 What rapid response activities are required?

Rapid response activities must include:

(a) Layoff aversion activities as described in § 682.320, as applicable.

(b) Immediate and on-site contact with the employer, representatives of the affected workers, and the local community, including an assessment of and plans to address the:

(1) Layoff plans and schedule of the employer;

(2) Background and probable assistance needs of the affected workers;

(3) Reemployment prospects for workers; and

(4) Available resources to meet the short and long-term assistance needs of the affected workers.

(c) The provision of information and access to unemployment compensation benefits and programs, such as Short-Time Compensation, comprehensive one-stop system services, and employment and training activities, including information on the Trade Adjustment Assistance (TAA) program (19 U.S.C. 2271 et seq.), Pell Grants, the GI Bill, and other resources;

(d) The delivery of other necessary services and resources including workshops and classes, use of worker transition centers, and job fairs, to support reemployment efforts for affected workers;

(e)) Partnership with the Local Board(s) and chief elected official(s) to ensure a coordinated response to the dislocation event and, as needed, obtain access to State or local economic development assistance. Such coordinated response may include the development of an application for a national dislocated worker grant as provided under WIOA secs. 101(38) and 134(a)(2)(A) and 20 CFR part 687;

(f) The provision of emergency assistance adapted to the particular layoff or disaster;

(g) As appropriate, developing systems and processes for:

(1) Identifying and gathering information for early warning of potential layoffs or opportunities for layoff aversion;

(2) Analyzing, and acting upon, data and information on dislocations and other economic activity in the State, region, or local area; and

(3) Tracking outcome and performance data and information related to the activities of

the rapid response program.

(h) Developing and maintaining partnerships with other appropriate Federal, State and local agencies and officials, employer associations, technical councils, other industry business councils, labor organizations, and other public and private organizations, as applicable, in order to:

(1) Conduct strategic planning activities to develop strategies for addressing dislocation events and ensuring timely access to a broad range of necessary assistance;

(2) Develop mechanisms for gathering and exchanging information and data relating to potential dislocations, resources available, and the customization of layoff aversion or rapid response activities, to ensure the ability to provide rapid response services as early as possible;

(i) Delivery of services to worker groups for which a petition for Trade Adjustment Assistance has been filed;

(j) The provision of additional assistance, as described in § 682.350, to local areas that

experience disasters, layoffs, or other dislocation events when such events exceed the capacity of the local area to respond with existing resources as provided under WIOA sec. 134(a)(2)(A)(i)(II).

(k) Provision of guidance and financial assistance as appropriate, in establishing a labor-management committee if voluntarily agreed to by the employee's bargaining representative and management. The committee may devise and oversee an implementation strategy that responds to the reemployment needs of the workers. The assistance to this committee may include:

(1) The provision of training and technical assistance to members of the committee; and;

(2) Funding the operating costs of a committee to enable it to provide advice and assistance in carrying out rapid response activities and in the design and delivery of WIOA-authorized services to affected workers.

§ 682.340 May other activities be undertaken as part of rapid response?

(a)) Yes, in order to conduct layoff aversion activities, or to prepare for and respond to dislocation events, in addition to the activities required under § 682.330, a State or designated entity may devise rapid response strategies or conduct activities that are intended to minimize the negative impacts of dislocation on workers, businesses, and communities and ensure rapid reemployment for workers affected by layoffs.

(b) When circumstances allow, rapid response may provide guidance and/or financial assistance to establish community transition teams to assist the impacted community in organizing support for dislocated workers and in meeting the basic needs of their families, including heat, shelter, food, clothing and other necessities and services that are beyond the resources and ability of the one-stop delivery system to provide.

§ 682.350 What is meant by "provision of additional assistance" in the Workforce

Innovation and Opportunity Act?

As stated in WIOA sec. 134(a)(2)(A)(ii), up to 25 percent of dislocated worker funds may be reserved for rapid response activities. Once the State has reserved adequate funds for rapid response activities, such as those described in §§ 682.310, 682.320, and 682.330, any of the remaining funds reserved may be provided to local areas that experience increases of unemployment due to natural disasters, layoffs or other events, for provision of direct career services to participants if there are not adequate local funds available to assist the dislocated workers. States may wish to establish the policies or procedures governing the provision of additional assistance as described in § 682.330.

§ 682.360 What rapid response, layoff aversion, or other information will States be

required to report to the Employment and Training Administration?

States must report information regarding the receipt of rapid response services by individuals enrolled as dislocated workers on the WIOA individual record.

§ 682.370 What are "allowable statewide activities" for which rapid response funds

remaining unspent at the end of the year of obligation may be recaptured by the State?

WIOA permits a State to recapture rapid response funds, which remain unspent at the end of the program year in which they were obligated, to be used for allowable statewide activities, including prioritizing the planning for and delivery of activities designed to prevent job loss, increasing the rate of reemployment, building relationships with businesses and other stakeholders, building and maintaining early warning networks and systems, and otherwise supporting efforts to allow long-term unemployed workers to return to work.

10. Add part 683 to read as follows:

PART 683 – ADMINISTRATIVE PROVISIONS UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

Subpart A—Funding and Closeout

Sec.

683.100 When do Workforce Innovation and Opportunity Act grant funds become available for obligation?

683.105 What award document authorizes the expenditure of funds under title I of the Workforce Innovation and Opportunity Act and the Wagner-Peyser Act?

683.110 What is the period of performance of Workforce Innovation and Opportunity Act title I and Wagner-Peyser Act funds?

683.115 What planning information must a State submit in order to receive a formula grant?

683.120 How are Workforce Innovation and Opportunity Act title I formula funds allocated to local areas?

683.125 What minimum funding provisions apply to Workforce Innovation and Opportunity Act adult, dislocated worker, and youth allocations?

683.130 Does a Local Board have the authority to transfer funds between the adult employment and training activities allocation and the dislocated worker employment and training activities allocation?

683.135 What reallotment procedures does the Secretary use?

683.140 What reallocation procedures must the Governors use?

683.145 What merit review and risk assessment does the Department conduct for Federal financial assistance awards made under the Workforce Innovation and Opportunity Act title I, subtitle D?

683.150 What closeout requirements apply to grants funded with Workforce Innovation and Opportunity Act title I and Wagner-Peyser funds?

Subpart B—Administrative Rules, Costs, and Limitations

Sec.

683.200 What general fiscal and administrative rules apply to the use of Workforce Innovation and Opportunity Act title I and Wagner-Peyser funds?

683.205 What administrative cost limitations apply to Workforce Innovation and Opportunity Act title I grants?

683.210 What audit requirements apply to the use of Workforce Innovation and Opportunity Act title I and Wagner-Peyser funds?

683.215 What Workforce Innovation and Opportunity Act title I functions and activities constitute the costs of administration subject to the administrative cost limitation?

683.220 What are the internal controls requirements for recipients and subrecipients of Workforce Innovation and Opportunity Act title I and Wagner-Peyser funds?

683.225 What requirements relate to the enforcement of the Military Selective Service Act?

683.230 Are there special rules that apply to veterans when income is a factor in eligibility determinations?

683.235 May Workforce Innovation and Opportunity Act title I funds be spent for construction?

683.240 What are the instructions for using real property with Federal equity?

683.245 Are employment generating activities, or similar activities, allowable under the Workforce Innovation and Opportunity Act title I?

683.250 What other activities are prohibited under title I of the Workforce Innovation and Opportunity Act?

683.255 What are the limitations related to religious activities of title I of the Workforce Innovation and Opportunity Act?

683.260 What prohibitions apply to the use of Workforce Innovation and Opportunity Act title I funds to encourage business relocation?

683.265 What procedures and sanctions apply to violations of this part?

683.270 What safeguards are there to ensure that participants in Workforce Innovation and Opportunity Act employment and training activities do not displace other employees?

683.275 What wage and labor standards apply to participants in activities under title I of the Workforce Innovation and Opportunity Act?

683.280 What health and safety standards apply to the working conditions of participants in activities under title I of the Workforce Innovation and Opportunity Act?

683.285 What are a recipient's obligations to ensure nondiscrimination and equal opportunity, and what are a recipient's obligations with respect to religious activities?

683.290 Are there salary and bonus restrictions in place for the use of title I and Wagner-Peyser funds?

683.295 Is earning of profit allowed under the Workforce Innovation and Opportunity Act?

Subpart C—Reporting Requirements

Sec.

683.300 What are the reporting requirements for programs funded under the Workforce Innovation and Opportunity Act?

Subpart D—Oversight and Resolution of Findings

Sec.

683.400 What are the Federal and State monitoring and oversight responsibilities?

683.410 What are the oversight roles and responsibilities of recipients and subrecipients of Federal financial assistance awarded under title I of the Workforce Innovation and Opportunity Act and Wagner-Peyser?

683.420 What procedures apply to the resolution of findings arising from audits, investigations, monitoring, and oversight reviews?

683.430 How does the Secretary resolve investigative and monitoring findings?

683.440 What is the Grant Officer resolution process?

Subpart E—Pay-for-Performance Contract Strategies

Sec.

683.500 What is a Workforce Innovation and Opportunity Act Pay-for-Performance contract strategy?

683.510 What is a Workforce Innovation and Opportunity Act Pay-for-Performance contract?

683.520 What funds can be used to support Workforce Innovation and Opportunity Act Pay-for-Performance contract strategies?

683.530 How long are funds used for Workforce Innovation and Opportunity Act Pay-for-Performance contract strategies available?

683.540 What is the State's role in assisting local areas in using Workforce Innovation and Opportunity Act Pay-for-Performance contract strategies?

Subpart F—Grievance Procedures, Complaints, and State Appeals Processes

Sec.

683.600 What local area, State, and direct recipient grievance procedures must be established?

683.610 What processes does the Secretary use to review grievances and complaints of title I recipients?

683.620 How are complaints and reports of criminal fraud and abuse addressed under the Workforce Innovation and Opportunity Act?

683.630 What additional appeal processes or systems must a State have for the Workforce Innovation and Opportunity Act program?

683.640 What procedures apply to the appeals of non-designation of local areas? 683.650 What procedures apply to the appeals of the Governor's imposition of sanctions for substantial violations or performance failures by a local area?

Subpart G—Sanctions, Corrective Actions, and Waiver of Liability

Sec.

683.700 When can the Secretary impose sanctions and corrective actions on recipients and subrecipients of title I Workforce Innovation and Opportunity Act funds?

683.710 Who is responsible for funds provided under title I and Wagner-Peyser?

683.720 What actions are required to address the failure of a local area to comply with the applicable uniform administrative provisions?

683.730 When can the Secretary waive the imposition of sanctions?

683.740 What is the procedure to handle a recipient of title I Workforce Innovation and

Opportunity Act funds' request for advance approval of contemplated corrective actions?

683.750 What procedure must be used for administering the offset/deduction provisions of the Workforce Innovation and Opportunity Act?

Subpart H—Administrative Adjudication and Judicial Review

Sec.

683.800 What actions of the Department may be appealed to the Office of Administrative Law Judges?

683.810 What rules of procedure apply to hearings conducted under this subpart? 683.820 What authority does the Administrative Law Judge have in ordering relief as an outcome of an administrative hearing?

683.830 When will the Administrative Law Judge issue a decision?

683.840 Is there an alternative dispute resolution process that may be used in place of an Office of Administrative Law Judges hearing?

683.850 Is there judicial review of a final order of the Secretary issued under WIOA?

Authority: Secs. 102, 116, 121, 127, 128, 132, 133, 147, 167, 169, 171, 181, 185, 189, 195, 503, Pub. L. 113-128, 128 Stat. 1425 (Jul. 22, 2014).

Subpart A—Funding and Closeout

§ 683.100 When do Workforce Innovation and Opportunity Act grand funds become available for obligation?

(a) Title I. Except as provided in paragraph (b) of this section or in the applicable fiscal year appropriation, fiscal year appropriations for programs and activities carried out under title I are available for obligation on the basis of a program year. A program year begins on July 1 in the fiscal year for which the appropriation is made and ends on June 30 of the following year.

(b) Youth funds. Fiscal year appropriations for a program year's youth activities, authorized under chapter 2, subtitle B, title I of WIOA may be made available for obligation beginning on April 1 of the fiscal year for which the appropriation is made.

(c) Wagner-Peyser Employment Service. Fiscal year appropriations for activities authorized under sec. 6 of the Wagner Peyser Act, 29 U.S.C. 49e, are available for obligation on the basis of a program year. A program year begins July 1 in the fiscal year for which the appropriation is made and ends on June 30 of the following year.

(d) Discretionary Grants. Discretionary grant funds are available for obligation in

accordance with the fiscal year appropriation.

§ 683.105 What award document authorizes the expenditure of funds under title I of the

Workforce Innovation and Opportunity Act and the Wagner-Peyser Act?

(a) Agreement. All WIOA title I and Wagner-Peyser funds are awarded by grant or

cooperative agreement, as defined under 2 CFR 200.51 and 2 CFR 200.24 respectively, or contract, as defined in 2 CFR 200.22. All grant or cooperative agreements are awarded by the Grant Officer through negotiation with the recipient (the non-Federal entity). The agreement describes the terms and conditions applicable to the award of WIOA title I and Wagner-Peyser

funds and will conform to the requirements of 2 CFR 200.210. Contracts are issued by the Contracting Officer in compliance with the Federal Acquisition Regulations.

(b) Grant funds awarded to States and outlying areas. The Federal funds allotted to the

States and outlying areas each program year in accordance with secs. 127(b) and 132(b) of WIOA

will be obligated by grant agreement.

(c) Native American programs. Awards of grants, contracts or cooperative agreements

for the WIOA Native American program will be made to eligible entities on a competitive basis every 4 program years for a 4-year period, in accordance with the provisions of sec. 166 of WIOA.

(d) Migrant and seasonal farmworker programs. Awards of grants or contracts for the

Migrant and Seasonal Farmworker Program will be made to eligible entities on a competitive basis every 4 program years for a 4-year period, in accordance with the provisions of sec. 167 of WIOA.

(e) Awards for evaluation and research under sec. 169 of WIOA. (1) Awards of grants,

contracts or cooperative agreements will be made to eligible entities for programs or activities authorized under WIOA sec. 169. These funds are for:

(i) Evaluations;

(ii) Research;

(iii) Studies;

(iv) Multi-State projects; and

(v) Dislocated worker projects.

(2) Contracts and grants under paragraphs (e)(1)(ii) through (iv) of this section in amounts that exceed $100,000 will be awarded on a competitive basis, except that a noncompetitive award may be made in the case of a project that is funded jointly with other public or private sector entities that provide a substantial portion of the assistance under the grant or contract for the project.

(3) Grants or contracts for carrying out projects in paragraphs (e)(1)(ii) through (iv) of this section may not be awarded on a noncompetitive basis to the same organization for more than 3 consecutive years.

(4) Entities with nationally recognized expertise in the methods, techniques and knowledge of workforce investment activities will be provided priority in awarding contracts or grants for the projects under paragraphs (e)(1)(ii) through (iv) of this section. The duration of such projects will be specified in the grant or contract agreement.

(5) A peer review process will be used to review and evaluate projects under this paragraph (e) for grants that exceed $500,000, and to designate exemplary and promising programs.

(f) Termination. Each grant, cooperative agreement, or contract terminates as indicated in the terms of the agreement or when the period of fund availability has expired. The grant must

be closed in accordance with the closeout provisions at 2 CFR 200.343 and 2 CFR 2900 as applicable.

§ 683.110 What is the period of performance of Workforce Innovation and Opportunity

Act title I and Wagner-Peyser Act funds?

(a) The statutory period of availability for expenditure for WIOA title I grants will be established as the period of performance for such grants unless otherwise provided in the grant agreement or cooperative agreement. All funds should be fully expended by the expiration of the period of performance or they risk losing their availability. Unless otherwise authorized in a grant or cooperative agreement or subsequent modification, recipients should expend funds with the shortest period of availability first.

(b) Grant funds expended by States. Funds allotted to States under WIOA secs. 127(b) and 132(b) for any program year are available for expenditure by the State receiving the funds only during that program year and the 2 succeeding program years as identified in § 683.100.

(c) Grant funds expended by local areas as defined in WIOA sec. 106. (1)(i) Funds allocated by a State to a local area under WIOA secs. 128(b) and 133(b), for any program year are available for

expenditure only during that program year and the succeeding program year;

(ii) Pay for performance exception. Funds used to carry out pay-for-performance contract strategies will remain available until expended in accordance with WIOA sec. 189(g)(2)(B).

(2) Funds which are not expended by a local area(s) in the 2-year period described in paragraph (c)(1)(i) of this section, must be returned to the State. Funds so returned are available for expenditure by State and local recipients and subrecipients only during the third program year of availability in accordance with WIOA secs. 128(c) and 132(c). These funds are available for only the following purposes:

(i) For statewide projects, or

(ii) For distribution to local areas which had fully expended their allocation of funds for the same program year within the 2-year period.

(d) Native American programs. Funds awarded by the Department under WIOA sec.

166(c) are available for expenditure for the period identified in the grant or contract award document, which will not exceed 4 years.

(e) Migrant and seasonal farmworker programs. Funds awarded by the Department

under WIOA sec. 167 are available for expenditure for the period identified in the grant award document, which will not exceed 4 years.

(f) Evaluations and research. Funds awarded by the Department under WIOA sec. 169 are available for expenditure for any program or activity authorized under sec. 169 of WIOA and will remain available until expended or as specified in the terms and conditions of award.

(g) Other programs under title I of WIOA, including secs. 170 and 171, and all other grants, contracts and cooperative agreements. Funds are available for expenditure for a period of performance identified in the grant or contract agreement.

(h) Wagner-Peyser. Funds allotted to States for grants under secs. 3 and 15 of the Wagner-Peyser Act for any program year are available for expenditure by the State receiving the funds only during that program year and the 2 succeeding program years. The program year begins on July 1 of the fiscal year for which the appropriation is made.

§ 683.115 What planning information must a State submit in order to receive a formula grant?

Each State seeking financial assistance under subtitle B, chapter 2 (youth) or chapter 3 (adults and dislocated workers), of title I of WIOA, or under the Wagner-Peyser Act must submit a Unified State Plan, under sec. 102 of WIOA or a Combined State Plan under WIOA sec. 103. The requirements for the plan content and the plan review process are described in sec. 102 of WIOA, sec. 8 of Wagner-Peyser Act, and 20 CFR 676.100 through 676.135 and 20 CFR 652.211 through 652.214.

§ 683.120 How are Workforce Innovation and Opportunity Act title I formula funds

allocated to local areas?

(a) General. The Governor must allocate WIOA formula funds allotted for services to youth, adults and dislocated workers in accordance with secs. 128 and 133 of WIOA and this section.

(1) State Boards must assist Governors in the development of any youth or adult discretionary within-State allocation formulas. (WIOA secs. 128(b)(3) and 133(b)(3)).

(2) Within-State allocations must be made:

(i) In accordance with the allocation formulas contained in secs. 128(b) and 133(b) of

WIOA and in the State Plan, and

(ii) After consultation with chief elected officials and Local Boards in each of the local areas.

(iii) In accordance with sec. 182(e) of WIOA, and must be made available to local areas not later than 30 days after the date funds are made available to the State or 7 days after the date the local plan for the area is approved, whichever is later.

(b) State reserve. Of the WIOA formula funds allotted for services to youth, adults and dislocated workers, the Governor must reserve not more than 15 percent of the funds from each of these sources to carry out statewide activities. Funds reserved under this paragraph may be combined and spent on statewide activities under secs. 129(b) and 134(a) of WIOA and statewide employment and training activities, for adults and dislocated workers, and youth activities, as described in 20 CFR 682.200 and 682.210, without regard to the funding source of the reserved funds.

(c) Youth allocation formula. (1) Unless the Governor elects to distribute funds in accordance with the discretionary allocation formula described in paragraph (c)(2) of this section, the remainder of youth funds not reserved under paragraph (b) of this section must be

allocated:

(i) $33\frac{1}{3}$ percent on the basis of the relative number of unemployed individuals in areas of substantial unemployment in each local area, compared to the total number of unemployed individuals in all areas of substantial unemployment in the State;

(ii) $33\frac{1}{3}$ percent on the basis of the relative excess number of unemployed individuals in each local area, compared to the total excess number of unemployed individuals in the State; and

(iii) $33\frac{1}{3}$ percent on the basis of the relative number of disadvantaged youth in each local area, compared to the total number of disadvantaged youth in the State except for local areas as described in sec. 107(c)(1)(C) of WIOA where the allotment must be based on the greater of either the number of individuals aged 16 to 21 in families with an income below the low-income level for the area or the number of disadvantaged youth in the area.

(2) Discretionary youth allocation formula. In lieu of making the formula allocation described in paragraph (c)(1) of this section, the State may allocate youth funds under a discretionary formula. Under this discretionary formula, the State must allocate a minimum of 70 percent of youth funds not reserved under paragraph (b) of this section on the basis of the formula in paragraph (c)(1) of this section, and may allocate up to 30 percent on the basis of a formula that:

(i) Incorporates additional factors (other than the factors described in paragraph (c)(1) of this section) relating to:

(A) Excess youth poverty in urban, rural and suburban local areas; and

(B) Excess unemployment above the State average in urban, rural and suburban local areas; and

(ii) Was developed by the State Board and approved by the Secretary of Labor as part of the State Plan.

(d) Adult allocation formula. (1) Unless the Governor elects to distribute funds in accordance with the discretionary allocation formula described in paragraph (d)(2) of this section, the remainder of adult funds not reserved under paragraph (b) of this section must be allocated:

(i) $33\frac{1}{3}$ percent on the basis of the relative number of unemployed individuals in areas of substantial unemployment in each local area, compared to the total number of unemployed individuals in areas of substantial unemployment in the State;

(ii) $33\frac{1}{3}$ percent on the basis of the relative excess number of unemployed individuals in each local area, compared to the total excess number of unemployed individuals in the State; and

(iii) $33\frac{1}{3}$ percent on the basis of the relative number of disadvantaged adults in each local area, compared to the total number of disadvantaged adults in the State. Except for local areas as described in sec. 107(c)(1)(C) of WIOA where the allotment must be based on the higher of either the number of adults with an income below the low-income level for the area or the

number of disadvantaged adults in the area.

(2) Discretionary adult allocation formula. In lieu of making the formula allocation

described in paragraph (d)(1) of this section, the State may allocate adult funds under a discretionary formula, Under this discretionary formula, the State must allocate a minimum of 70 percent of adult funds not reserved under paragraph (b) of this section on the basis of the formula in paragraph (d)(1), and may allocate up to 30 percent on the basis of a formula that:

(i) Incorporates additional factors (other than the factors described in paragraph (d)(1) of

this section) relating to:

(A) Excess poverty in urban, rural and suburban local areas; and

(B) Excess unemployment above the State average in urban, rural and suburban local areas; and

(ii) Was developed by the State Board and approved by the Secretary of Labor as part of the State Plan.

(e) Dislocated worker allocation formula. (1) The remainder of dislocated worker funds

not reserved under paragraph (b) of this section must be allocated on the basis of a formula prescribed by the Governor that distributes funds in a manner that addresses the State's dislocated

worker needs. Funds so distributed must not be less than 60 percent of the State's formula allotment.

(2) The Governor's dislocated worker formula must use the most appropriate information available to the Governor, including information on:

(i) Insured unemployment data,

(ii) Unemployment concentrations,

(iii) Plant closings and mass layoff data,

(iv) Declining industries data,

(v) Farmer-rancher economic hardship data, and

(vi) Long-term unemployment data.

(3) The Governor may not amend the dislocated worker formula more than once for any program year.

(f) Rapid response. (1) Of the WIOA formula funds allotted for services to dislocated

workers in sec. 132(b)(2)(B) of WIOA, the Governor must reserve not more than 25 percent of the funds for statewide rapid response activities described in WIOA sec. 134(a)(2)(A) and 20 CFR 682.300 through 682.370.

(2) Unobligated funds. Funds reserved by a Governor for rapid response activities under sec. 133(a)(2) of WIOA, and sec. 133(a)(2) of the Workforce Investment Act (as in effect on the day before the date of enactment of WIOA), to carry out sec. 134(a)(2)(A) of WIOA that remain unobligated after the first program year for which the funds were allotted, may be used by the Governor to carry out statewide activities authorized under paragraph (b) of this section and §§ 682.200 and 682.210.

(g) Special Rule. For the purpose of the formula in paragraphs (c)(1) and (d)(1) of this section, the State must, as appropriate and to the extent practicable, exclude college students and members of the Armed Forces from the determination of the number of disadvantaged youth and disadvantaged adults.

§ 683.125 What minimum funding provisions apply to Workforce Innovation and

Opportunity Act adult, dislocated worker, and youth allocations?

(a) For funding authorized by secs. 128(b)(2)(ii), 133(b)(ii), and 133(b)(2)(B)(iii) of WIOA, a local area must not receive an allocation percentage for fiscal year 2016 or subsequent fiscal year that is less than 90 percent of the average allocation percentage of the local area for the 2 preceding fiscal years.

(b) Amounts necessary to increase allocations to local areas to comply with paragraph

(a) of this section must be obtained by ratably reducing the allocations to be made to other local areas.

(c) If the amounts of WIOA funds appropriated in a fiscal year are not sufficient to provide the amount specified in paragraph (a) of this section to all local areas, the amounts allocated to each local area must be ratably reduced.

§ 683.130 Does a Local Board have the authority to transfer funds between the adult

employment and training activities allocation and the dislocated worker employment and

training activities allocation?

(a)) A Local Board may transfer up to 100 percent of a program year allocation for adult employment and training activities, and up to 100 percent of a program year allocation for dislocated worker employment and training activities between the two programs.

(b) Before making any such transfer, a Local Board must obtain the Governor's written approval.

(c) Local Boards may not transfer funds to or from the youth program.

§ 683.135 What reallotment procedures does the Secretary use?

(a) The Secretary determines, during the second quarter of each program year, whether a State has obligated its required level of at least 80 percent of the funds allotted under secs. 127 and 132 of WIOA for programs serving youth, adults, and dislocated workers for the prior program year, as separately determined for each of the three funding streams. The amount to be recaptured from each State for reallotment, if any, is based on State obligations of the funds allotted to each State under secs. 127 and 132 of WIOA for programs serving youth, adults or dislocated workers, less any amount reserved (up to five percent at the State level) for the costs of administration. The recapture amount, if any, is separately determined for each funding stream.

(b) The Secretary reallots youth, adult and dislocated worker funds among eligible States in accordance with the provisions of secs. 127(c) and 132(c) of WIOA, respectively. To be eligible to receive a reallotment of youth, adult, or dislocated worker funds under the reallotment procedures, a State must have obligated at least 80 percent of the prior program year's allotment, less any amount reserved for the costs of administration at the State level of youth, adult, or dislocated worker funds.

A State's eligibility to receive a reallotment is separately determined for each funding stream.

(c) The term "obligation" is defined at 2 CFR 200.71. Obligations must be reported on the required Department of Labor (DOL or the Department) financial form, such as the ETA- 9130 form. For purposes of this section, the Secretary will also treat as State obligations:

(1) Amounts allocated by the State, under secs. 128(b) and 133(b) of WIOA, to the local area, including a single-State local area if the State has been designated as a single local area as described in sec. 106(d) of WIOA or to a balance of State local area administered by a unit of the State government, and;

(2) Inter-agency transfers and other actions treated by the State as encumbrances against amounts reserved by the State under secs. 128(a) and 133(a) of WIOA for statewide workforce investment activities.

§ 683.140 What reallocation procedures must the Governors use?

(a) The Governor, after consultation with the State Board, may reallocate youth, adult, and dislocated worker funds among local areas within the State in accordance with the provisions of secs. 128(c) and 133(c) of WIOA. If the Governor chooses to reallocate funds, the provisions in paragraphs (b) and (c) of this section apply.

(b) For the youth, adult and dislocated worker programs, the amount to be recaptured from each local area for purposes of reallocation, if any, must be based on the amount by which the prior year's unobligated balance of allocated funds exceeds 20 percent of that year's allocation for the program, less any amount reserved (up to 10 percent) for the costs of administration. Unobligated balances must be determined based on allocations adjusted for any allowable transfer between

funding streams. The amount to be recaptured, if any, must be separately determined for each funding stream. The term "obligation" is defined at 2 CFR 200.71.

(c) To be eligible to receive youth, adult or dislocated worker funds under the reallocation procedures, a local area must have obligated at least 80 percent of the prior program year's allocation, less any amount reserved (up to 10 percent) for the costs of administration, for youth, adult, or dislocated worker activities, as separately determined. A local area's eligibility to receive a reallocation must be separately determined for each funding stream.

§ 683.145 What merit review and risk assessment does the Department conduct for

Federal financial assistance awards made under Workforce Innovation and Opportunity

Act title I, subtitle D?

(a) For competitive awards, the Department will design and execute a merit review process for applications as prescribed under 2 CFR 200.204 when issuing Federal financial assistance awards made under WIOA title I, subtitle D. This process will be described or incorporated by reference in the applicable funding opportunity announcement.

(b) Prior to issuing a Federal financial assistance award under WIOA title I, subtitle D, the Department will conduct a risk assessment to assess the organization's overall ability to administer Federal funds as required under 2 CFR 200.205. As part of this assessment, the

Department may consider any information that has come to its attention and will consider the organization's history with regard to the management of other grants, including DOL grants.

(c) In evaluating risks posed by applicants, the Department will consider the following:

(1) Financial stability;

(2) Quality of management systems and ability to meet the management standards prescribed in this part;

(3) History of performance. The applicant's record in managing Federal awards, if it is a prior recipient of Federal awards, including timeliness of compliance with applicable reporting requirements, conformance to the terms and conditions of previous Federal awards, and if applicable, the extent to which any previously awarded amounts will be expended prior to future awards;

(4) Reports and findings from audits; and

(5) The applicant's ability to implement effectively statutory, regulatory, or other requirements imposed on non-Federal entities.

§ 683.150 What closeout requirements apply to grants funded with Workforce Innovation

<u>and Opportunity Act title I and Wagner-Peyser funds</u>?

(a)) After the expiration of the period of performance, the Department will close-out the Federal award when it determines that all applicable administrative actions and all required work of the Federal award have been completed by the grant recipient. This section specifies the actions the grant recipient and the Department must take to complete this process.

(1) The grant recipient must submit, no later than 90 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award.

(2) The Department may approve extensions when requested by the grant recipient.

(b) Unless the Department authorizes an extension, the grant recipient must liquidate all obligations and/or accrued expenditures incurred under the Federal award not later than 90 calendar days after the end date of the period of performance as specified in the terms and conditions of the Federal award.

(c) The Department must make prompt payments to the grant recipient for allowable reimbursable costs under the Federal award being closed out.

(d) The grant recipient must promptly refund any balances of unobligated cash that the Department paid in advance or paid and that is not authorized to be retained by the grant recipient. See Office of Management and Budget Circular A-129, 2 CFR 200.345, and 2 CFR part 2900 for requirements regarding unreturned amounts that become delinquent debts.

(e)) Consistent with the terms and conditions of the Federal award, the Department must make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The grant recipient must account for any real and personal property acquired with Federal funds or received from the Federal government in accordance with 2 CFR 200.310 to 200.316, and 200.329.

(g) The Department should complete all closeout actions for Federal awards no later than 1 year after receipt and acceptance of all required final reports.

(h) The closeout of an award does not affect any of the following:

(1) The right of the Department to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the grant recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements as described in 2 CFR part 200, subpart F.

(4) Property management requirements in 2 CFR 200.310 to 200.316.

(5) Records retention as required in 2 CFR 200.333 to 200.337.

(i) After closeout of an award, a relationship created under the award may be modified or ended in whole or in part with the consent of the Department and the grant recipient, provided the responsibilities of the grant recipient referred to in 2 CFR 200.344(a) and 2 CFR 200.310 to 200.316 are considered, and provisions are made for continuing responsibilities of the grant recipient, as appropriate.

(j) Grant recipients that award WIOA funds to subrecipients must institute a timely closeout process after the end of performance to ensure a timely closeout in accordance with 2 CFR 200.343 to 200.344.

Subpart B—Administrative Rules, Costs, and Limitations

§ 683.200 What general fiscal and administrative rules apply to the use of Workforce Innovation and Opportunity Act title I and Wagner-Peyser funds?

(a) Uniform guidance. Recipients and subrecipients of a Federal award under title I of WIOA and Wagner-Peyser must follow the uniform guidance at 2 CFR parts 200, 215, 225, 230 and Appendices I through XI, including any exceptions identified by the Department at 2 CFR part 2900.

(1) Commercial organizations, for-profit entities, and foreign entities that are recipients

and subrecipients of a Federal award must adhere to 2 CFR part 200, including any exceptions

identified by the Department under 2 CFR part 2900 and to the Federal Acquisition Regulations (FAR), including 48 CFR part 31.

(b) Allowable costs and cost principles. (1) Recipients and subrecipients of a Federal

award under title I of WIOA and Wagner-Peyser must follow the cost principles at subpart E and Appendices III through IX of 2 CFR part 200, including any exceptions identified by the Department at 2 CFR part 2900.

(2) Prior approval: Unless specified in the grant agreement, for those items requiring prior approval in the Uniform Guidance (e.g., selected items of cost, budget realignment), the authority to grant or deny approval is delegated to the Governor for programs funded under sec. 127 or 132 of WIOA or under Wagner-Peyser.

(3) Costs of workforce councils, advisory councils, Native American Employment and Training Councils, and Local Board committees established under title I of WIOA are allowable.

(c) Uniform administrative requirements. (1) Except as provided in paragraphs (c)(3)

through (6) of this section, all recipients and subrecipients of a Federal award under title I of WIOA and under Wagner-Peyser must follow subparts A through D and Appendices I through II of 2 CFR

part 200, including any exceptions identified by the Department at 2 CFR part 2900.

(2) Unless otherwise specified in the grant agreement, expenditures must be reported on accrual basis.

(3) In accordance with the requirements at 2 CFR 200.400(g), subgrantees may not earn or keep any profit resulting from Federal financial assistance, unless expressly authorized by the terms and conditions of the Federal award.

(4) In addition to the requirements at 2 CFR 200.317 through 200.326 (as appropriate), all procurement contracts between Local Boards and units of State or local governments must be conducted only on a cost reimbursement basis.

(5) In addition to the requirements at 2 CFR 200.318, which address codes of conduct and conflict of interest the following applies:

(i) A State Board member, Local Board member, or Board standing committee member must neither cast a vote on, nor participate in any decision-making capacity, on the provision of services by such member (or any organization which that member directly represents), nor on any matter which would provide any direct financial benefit to that member or a member of his immediate family.

(ii) Neither membership on the State Board, the Local Board, or a Board standing committee, nor the receipt of WIOA funds to provide training and related services, by itself, violates these conflict of interest provisions.

(iii) In accordance with the requirements at 2 CFR 200.112, recipients of Federal awards must disclose in writing any potential conflict of interest to the Department. Subrecipients must disclose in writing any potential conflict of interest to the recipient of grant funds.

(6) The addition method, described at 2 CFR 200.307, must be used for all program income earned under title I of WIOA and Wagner-Peyser grants. When the cost of generating program income has been charged to the program, the gross amount earned must be added to the WIOA program. However, the cost of generating program income must be subtracted from the amount earned to establish the net amount of program income available for use under the grants when these costs have not been charged to the WIOA program.

(7) Any excess of revenue over costs incurred for services provided by a governmental or non-profit entity must be included in program income. (WIOA secs. 194(7)(A)-(B))

(8) Interest income earned on funds received under title I of WIOA and Wagner-Peyser must be included in program income. (WIOA sec. 194(7)(B)(iii))

(9) On a fee-for-service basis, employers may use local area services, facilities, or equipment funded under title I of WIOA to provide employment and training activities to incumbent workers:

(i) When the services, facilities, or equipment are not being used by eligible participants;

(ii) If their use does not affect the ability of eligible participants to use the services, facilities, or equipment; and

(iii) If the income generated from such fees is used to carry out programs authorized under this title.

(d) Government-wide debarment and suspension, and government-wide drug-free

workplace requirements. All WIOA title I and Wagner-Peyser grant recipients and subrecipients must comply with the government-wide requirements for debarment and suspension, and the government-wide requirements for a drug-free workplace, codified at 29 CFR part 98.

(e) Restrictions on lobbying. All WIOA title I and Wagner-Peyer grant recipients and subrecipients must comply with the restrictions on lobbying specified in WIOA sec. 195 and codified in the Department regulations at 29 CFR part 93.

(f) Buy-American. As stated in sec. 502 of WIOA, all funds authorized in title I of WIOA and Wagner- Peyser must be expended on only American-made equipment and products, as required by the Buy American Act (41 U.S.C. 8301-8305).

(g) Nepotism. (1) No individual may be placed in a WIOA employment activity if a member of that person's immediate family is directly supervised by or directly supervises that individual.

(2) To the extent that an applicable State or local legal requirement regarding nepotism is more restrictive than this provision, such State or local requirement must be followed.

(h) Mandatory disclosures. All WIOA title I and Wagner-Peyser recipients of Federal

awards must disclose as required at 2 CFR 200.113, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures can result in any of the remedies described in 2 CFR 200.338 (Remedies for noncompliance), including suspension or debarment.

§ 683.205 What administrative cost limitations apply to Workforce Innovation and

Opportunity Act title I grants?

(a) State formula grants. (1) As part of the 15 percent that a State may reserve for

statewide activities, the State may spend up to 5 percent of the amount allotted under secs. 127(b)(1), 132(b)(1), and 132(b)(2) of WIOA for the administrative costs of statewide activities.

(2) Local area expenditures for administrative purposes under WIOA formula grants are limited to no more than 10 percent of the amount allocated to the local area under secs. 128(b) and 133(b) of WIOA.

(3) The 5 percent reserved for statewide administrative costs and the 10 percent reserved for local administrative costs may be used for administrative costs for any of the statewide youth

workforce investment activities or statewide employment and training activities under secs. 127(b)(1), 128(b), and 132(b) of WIOA.

(4) In a one-stop environment, administrative costs borne by other sources of funds, such as the Wagner-Peyser Act, are not included in the administrative cost limit calculation. Each program's administrative activities are chargeable to its own grant and subject to its own administrative cost limitations.

(5) Costs of negotiating a MOU or infrastructure agreement under title I of WIOA are excluded from the administrative cost limitations.

(b) Discretionary grants. (1) Limits on administrative costs, if any, for programs

operated under subtitle D of title I of WIOA will be identified in the grant or cooperative agreement.

§ 683.210 What audit requirements apply to the use of Workforce Innovation and

Opportunity Act title I and Wagner-Peyser funds?

(a)(1) All recipients of WIOA title I and Wagner-Peyser funds that expend more than the minimum amounts specified in 2 CFR part 200, subpart F in Federal awards during their fiscal year must have a program specific or single audit conducted in accordance with 2 CFR part 200, subpart F.

(2) Commercial or for-profit. Grant recipients and subrecipients of title I and Wagner-

Peyser funds that are commercial or for-profit entities must adhere to the requirements contained in 2 CFR part 200, subpart F.

(3) Subrecipients and contractors. An auditee may simultaneously be a recipient, a

subrecipient, and a contractor depending on the substance of its agreements with Federal awarding agencies and pass-through entities. Federal awards expended as a recipient or subrecipient are subject to audit requirements under 2 CFR part 200, subpart F.

(4) Contractors. The payments received for goods or services provided as a contractor

are not Federal awards. Subrecipient and contractor determinations made under 2 CFR 200.330 should be considered in determining whether payments constitute a Federal award or a payment for goods and services provided as a contractor.

§ 683.215 What Workforce Innovation and Opportunity Act title I functions and activities

constitute the costs of administration subject to the administrative cost limitation?

(a) The costs of administration are expenditures incurred by State and Local Workforce

Development Boards, Regions, direct grant recipients, including State grant recipients under subtitle B of title I of WIOA, and recipients of awards under subtitle D of title I, as well as local grant recipients, local grant subrecipients, local fiscal agents and one-stop operators that are associated with those specific functions identified in paragraph (b) of this section and which are not related to the direct provision of workforce investment services, including services to participants and employers. These costs can be both personnel and non-personnel and both direct and indirect.

(b) The costs of administration are the costs associated with performing the following functions:

(1) Performing the following overall general administrative functions and coordination of those functions under title I of WIOA:

(i) Accounting, budgeting, financial and cash management functions;

(ii) Procurement and purchasing functions;

(iii) Property management functions;

(iv) Personnel management functions;

(v) Payroll functions;

(vi) Coordinating the resolution of findings arising from audits, reviews, investigations

and incident reports;

(vii) Audit functions;

(viii) General legal services functions;

(ix) Developing systems and procedures, including information systems, required for these administrative functions; and

(x) Fiscal agent responsibilities;

(2) Performing oversight and monitoring responsibilities related to WIOA administrative functions;

(3) Costs of goods and services required for administrative functions of the program, including goods and services such as rental or purchase of equipment, utilities, office supplies, postage, and rental and maintenance of office space;

(4) Travel costs incurred for official business in carrying out administrative activities or the overall management of the WIOA system;

and

(5) Costs of information systems related to administrative functions (for example, personnel, procurement, purchasing, property management, accounting and payroll systems)

including the purchase, systems development and operating costs of such systems.

(c)(1) Awards to subrecipients or contractors that are solely for the performance of administrative functions are classified as administrative costs.

(2) Personnel and related non-personnel costs of staff that perform both administrative functions specified in paragraph (b) of this section and programmatic services or activities must be allocated as administrative or program costs to the benefitting cost objectives/categories based on documented distributions of actual time worked or other equitable cost allocation methods.

(3) Specific costs charged to an overhead or indirect cost pool that can be identified directly as a program cost are to be charged as a program cost. Documentation of such charges must be maintained.

(4) Except as provided at paragraph (c)(1) of this section, all costs incurred for functions and activities of subrecipients and contractors are program costs.

(5) Continuous improvement activities are charged to administration or program category based on the purpose or nature of the activity to be improved. Documentation of such charges must be maintained.

(6) Costs of the following information systems including the purchase, systems development, and operational costs (e.g., data entry) are charged to the program category:

(i) Tracking or monitoring of participant and performance information;

(ii) Employment statistics information, including job listing information, job skills information, and demand occupation information;

(iii) Performance and program cost information on eligible providers of training services, youth activities, and appropriate education activities;

(iv) Local area performance information; and

(v) Information relating to supportive services and unemployment insurance claims for program participants.

(d) Where possible, entities identified in item (a) must make efforts to streamline the services in paragraphs (b)(1) through (5) of this section to reduce administrative costs by minimizing duplication and effectively using information technology to improve services.

§ 683.220 What are the internal controls requirements for recipients and subrecipients of

Workforce Innovation and Opportunity Act title I and Wagner-Peyser funds?

(a) Recipients and subrecipients of WIOA title I and Wagner-Peyser Act funds must have an internal control structure and written policies in place that provide safeguards to protect personally identifiable information, records, contracts, grant funds, equipment, sensitive information, tangible items, and other information that is readily or easily exchanged in the open market, or that the Department or the recipient or subrecipient considers to be sensitive, consistent with applicable Federal, State and local privacy and confidentiality laws. Internal controls also must include reasonable assurance that the entity is:

(1) Managing the award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award;

(2) Complying with Federal statutes, regulations, and the terms and conditions of the Federal awards;

(3) Evaluating and monitoring the recipient's and subrecipient's compliance with the statute, regulations and the terms and conditions of Federal awards; and

(4) Taking prompt action when instances of noncompliance are identified.

(b) Internal controls should be in compliance with the guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). See 2 CFR 200.303.

§ 683.225 What requirements relate to the enforcement of the Military Selective Service

Act?

The requirements relating to the enforcement of the Military Selective Service Act are found at WIOA sec. 189(h).

§ 683.230 Are there special rules that apply to veterans when income is a factor in

eligibility determinations?

Yes, under 38 U.S.C. 4213, when past income is an eligibility determinant for Federal employment or training programs, any amounts received as military pay or allowances by any person who served on active duty, and certain other specified benefits must be disregarded for the veteran and for other individuals for whom those amounts would normally be applied in making an eligibility determination. This applies when determining if a person is a "low-income individual" for eligibility purposes (for example, in the WIOA youth, or NFJP programs). Also, it applies when income is used as a factor when a local area provides priority of service for "low- income individuals" with title I WIOA funds (see 20 CFR 680.600 and 20 CFR 680.650).

Questions regarding the application of 38 U.S.C. 4213 should be directed to the Veterans' Employment and Training Service.

§ 683.235 May Workforce Innovation and Opportunity Act title I funds be spent for

construction?

WIOA title I funds must not be spent on construction, purchase of facilities or buildings, or

other capital expenditures for improvements to land or buildings, except with the prior written approval of the Secretary.

§ 683.240 What are the instructions for using real property with Federal equity?

(a) SESA properties. Federal equity acquired in real property through grants to States

awarded under title III of the Social Security Act or the Wagner-Peyser Act, including State

Employment Security Agency (SESA) real property, is transferred to the States that used the grant to acquire such equity.

(1) The portion of any real property that is attributable to the Federal equity transferred under this section must be used to carry out activities authorized under WIOA, title III of the Social Security Act (Unemployment Compensation program) or the Wagner-Peyser Act.

(2) When such real property is no longer needed for the activities described in paragraph (a)(1) of this section, the States must request disposition instructions from the Grant Officer prior to disposition or sale of the property. The portion of the proceeds from the disposition of the real property that is attributable to the Federal equity transferred under this section must be used to carry out activities authorized under WIOA, title III of the Social Security Act, or the Wagner- Peyser Act.

(3) Limitation on use of funds. States must not use funds awarded under WIOA, title III of the Social Security Act, or the Wagner-Peyser Act to amortize the costs of real property that is purchased by any State on or after February 15, 2007, the date of enactment of the Revised

Continuing Appropriations Resolution, 2007.

(4) Properties occupied by Wagner-Peyser must be collocated with one-stop centers.

(b) Reed Act- funded properties. Properties with Reed Act equity may be used for the one-stop service delivery system to the extent that the proportionate share of Reed Act equity is less than or equal to the proportionate share of occupancy by the Unemployment Compensation and Wagner-Peyser Act programs in such properties. When such real property is no longer needed as described in the previous sentence, the State must request disposition instructions from the Grant Officer prior to disposition or sale.

(c) Job Training Partnership Act-funded properties. Real property that was purchased with JTPA funds and transferred to WIA, is now transferred to the WIOA title I programs and must be used for WIOA purposes. When such real property is no longer needed for the activities of WIOA, the recipient or subrecipient must seek instructions from the Grant Officer or State (in the case of a subrecipient) prior to disposition or sale.

§ 683.245 Are employment generating activities, or similar activities, allowable under the

Workforce Innovation and Opportunity Act title I?

(a) Under sec. 181(e) of WIOA, title I funds must not be spent on employment generating activities, investment in revolving loan funds, capitalization of businesses, investment in contract bidding resource centers, economic development activities, or similar activities, unless they are directly related to training for eligible individuals. For purposes of this prohibition, employer outreach and job development activities are directly related to training for eligible individuals.

(b) These employer outreach and job development activities may include:

(1) Contacts with potential employers for the purpose of placement of WIOA participants;

(2) Participation in business associations (such as chambers of commerce); joint labor management committees, labor associations, and resource centers;

(3) WIOA staff participation on economic development boards and commissions, and work with economic development agencies to:

(i) Provide information about WIOA programs,

(ii) Coordinate activities in a region or local area to promote entrepreneurial training and microenterprise services,

(iii) Assist in making informed decisions about community job training needs, and

(iv) Promote the use of first source hiring agreements and enterprise zone vouchering

services;

(4) Active participation in local business resource centers (incubators) to provide technical assistance to small businesses and new businesses to reduce the rate of business failure;

(5) Subscriptions to relevant publications;

(6) General dissemination of information on WIOA programs and activities;

(7) The conduct of labor market surveys;

(8) The development of on-the-job training opportunities; and

(9) Other allowable WIOA activities in the private sector.

§ 683.250 What other activities are prohibited under title I of the Workforce Innovation

and Opportunity Act?

(a) WIOA title I funds must not be spent on:

(1) The wages of incumbent employees during their participation in economic development activities provided through a statewide workforce investment system (WIOA secs. 181(b)(1) and 181(b)(2));

(2) Public service employment, except as specifically authorized under title I of WIOA (WIOA sec. 194(10)).

(3) Expenses prohibited under any other Federal, State or local law or regulation.

(4) Subawards or contracts with parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal programs or activities.

(5) Contracts with persons falsely labeling products made in America.

(b) WIOA formula funds available to States and local areas under subtitle B, title I must not be used for foreign travel (WIOA sec. 181(e)).

§ 683.255 What are the limitations related to religious activities of title I of the Workforce

Innovation and Opportunity Act?

(a)) Section 188(a)(3) of WIOA prohibits the use of funds to employ participants to carry out the construction, operation, or maintenance of any part of any facility used for sectarian instruction or as a place for religious worship with the exception of maintenance of facilities that are not primarily used for instruction or worship and are operated by organizations providing services to WIOA participants.

(b) 29 CFR part 2, subpart D governs the circumstances under which Department support, including WIOA title I financial assistance, may be used to employ or train participants in religious activities. Under that subpart, such assistance may be used for such employment or training only when the assistance is provided indirectly within the meaning of the Establishment Clause of the U.S. Constitution, and not when the assistance is provided directly. That subpart also contains requirements related to equal treatment in Department of Labor programs for religious organizations, and to protecting the religious liberty of Department of Labor social service providers and beneficiaries. (29 CFR part 2, subpart D—Equal Treatment in Department of Labor Programs for Religious Organizations, Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries).

§ 683.260 What prohibitions apply to the use of Workforce Innovation and Opportunity

Act title I funds to encourage business relocation?

(a)) Section 181(d) of WIOA states that funds must not be used or proposed to be used

for:

(1) The encouragement or inducement of a business, or part of a business, to relocate from any location in the United States, if the relocation results in any employee losing his or her job at the original location;

(2) Customized training, skill training, on-the-job training, incumbent worker training, transitional employment, or company specific assessments of job applicants for or employees of any business or part of a business that has relocated from any location in the United States, until the company has operated at that location for 120 days, if the relocation has resulted in any employee losing his or her jobs at the original location.

(b) Pre-award review. To verify that a business establishment which is new or

expanding is not, in fact, relocating employment from another area, standardized pre-award review criteria developed by the State must be completed and documented jointly by the local area and the business establishment as a prerequisite to WIOA assistance.

(1) The review must include names under which the establishment does business, including predecessors and successors in interest; the name, title, and address of the company official certifying the information, and whether WIOA assistance is sought in connection with past or impending job losses at other facilities, including a review of whether WARN notices relating to the employer have been filed.

(2) The review may include consultations with labor organizations and others in the affected local area(s).

§ 683.265 What procedures and sanctions apply to violations of this part?

(a) The Grant Officer will promptly review and take appropriate action on alleged violations of the provisions relating to:

(1) Construction (§ 683.235);

(2) Employment generating activities (§ 683.245);

(3) Other prohibited activities (§ 683.250);

(4) The limitation related to religious activities (§ 683.255); and

(5) The use of WIOA title I funds to encourage business relocation (§ 683.260).

(b) Procedures for the investigation and resolution of the violations are provided under the Grant Officer's resolution process at § 683.440.

(c)) Sanctions and remedies are provided for under sec. 184(c) of WIOA for violations of the provisions relating to:

(1) Construction (§ 683.235);

(2) Employment generating activities (§ 683.245);

(3) Other prohibited activities (§ 683.250); and

(4) The limitation related to religious activities (§ 683.255(b)).

(d) Sanctions and remedies are provided for in sec. 181(d)(3) of WIOA for violations of § 683.260, which addresses business relocation.

(e) Violations of § 683.255(a) will be handled in accordance with the Department's nondiscrimination regulations implementing sec. 188 of WIOA, codified at 29 CFR part 37.

§ 683.270 What safeguards are there to ensure that participants in Workforce Innovation

and Opportunity Act employment and training activities do not displace other employees?

(a)) A participant in a program or activity authorized under title I of WIOA must not displace (including a partial displacement, such as a reduction in the hours of non-overtime work, wages, or employment benefits) any currently employed employee (as of the date of the participation).

(b) A program or activity authorized under title I of WIOA must not impair existing

contracts for services or collective bargaining agreements. When a program or activity authorized under title I of WIOA would be inconsistent with a collective bargaining agreement, the appropriate labor organization and employer must provide written concurrence before the program or activity begins.

(c)) A participant in a program or activity under title I of WIOA may not be employed in or assigned to a job if:

(1) Any other individual is on layoff from the same or any substantially equivalent job;

(2) The employer has terminated the employment of any regular, unsubsidized employee or otherwise caused an involuntary reduction in its workforce with the intention of filling the vacancy so created with the WIOA participant; or

(3) The job is created in a promotional line that infringes in any way on the promotional opportunities of currently employed workers as of the date of the participation.

(d) Regular employees and program participants alleging displacement may file a complaint under the applicable grievance procedures found at § 683.600. (WIOA sec. 181)

§ 683.275 What wage and labor standards apply to participants in activities under title I of

the Workforce Innovation and Opportunity Act?

(a) Individuals in on-the-job training or individuals employed in activities under title I of WIOA must be compensated at the same rates, including periodic increases, as trainees or employees who are similarly situated in similar occupations by the same employer and who have similar training, experience and skills. Such rates must be in accordance with applicable law, but may not be less than the higher of the rate specified in sec. 6(a)(1) of the Fair Labor Standards

Act of 1938 (29 U.S.C. 206(a)(1)) or the applicable State or local minimum wage law. (WIOA sec. 181(a)(1)(A))

(b) The reference in paragraph (a) of this section to sec. 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) is not applicable for individuals in territorial jurisdictions in which sec. 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) does not apply. (WIOA sec. 181(a)(1)(B))

(c) Individuals in on-the-job training or individuals employed in programs and activities under title I of WIOA must be provided benefits and working conditions at the same level and to the same extent as other trainees or employees working a similar length of time and doing the same type of work. (WIOA sec. 181(b)(5))

(d) Allowances, earnings, and payments to individuals participating in programs under title I of WIOA are not considered as income for purposes of determining eligibility for and the amount of income transfer and in-kind aid furnished under any Federal or Federally-assisted program based on need, other than as provided under the Social Security Act (42 U.S.C. 301 et seq.). (WIOA sec. 181(a)(2))

(e) Funds under title I of WIOA must not be used to pay the wages of incumbent employees during their participation in economic development activities provided through a statewide workforce delivery system. (WIOA sec. 181(b)(1))

§ 683.280 What health and safety standards apply to the working conditions of

participants in activities under title I of the Workforce Innovation and Opportunity Act?

(a) Health and safety standards established under Federal and State law otherwise applicable to working conditions of employees are equally applicable to working conditions of participants engaged in programs and activities under title I of WIOA.

(b)(1) To the extent that a State workers' compensation law applies, workers' compensation must be provided to participants in programs and activities under title I of WIOA on the same basis as the compensation is provided to other individuals in the State in similar employment.

(2) If a State workers' compensation law applies to a participant in work experience, workers' compensation benefits must be available for injuries suffered by the participant in such work experience. If a State workers' compensation law does not apply to a participant in work experience, insurance coverage must be secured for injuries suffered by the participant in the course of such work experience.

§ 683.285 What are a recipient's obligations to ensure nondiscrimination and equal

opportunity, and what are a recipient's obligations with respect to religious activities?

(a)(1) Recipients, as defined in 29 CFR 37.4, must comply with the nondiscrimination and equal opportunity provisions of WIOA sec. 188 and its implementing regulations, codified at 29 CFR part 37. Under that definition, the term "recipients" includes State and Local Workforce Development Boards, one-stop operators, service providers, Job Corps contractors, and subrecipients, as well as other types of individuals and entities.

(2) Nondiscrimination and equal opportunity requirements and procedures, including complaint processing and compliance reviews, are governed by the regulations implementing sec. 188 of WIOA, codified at 29 CFR part 37, and are administered and enforced by the DOL Civil Rights Center.

(3) As described in sec. 188 of WIOA, financial assistance provided under title I of WIOA may be used to meet a recipient's obligation to provide physical and programmatic accessibility and reasonable accommodation/modification in regard to the WIOA program, as required by sec. 504 of the Rehabilitation Act of 1973, as amended, the Americans with Disabilities Act of 1990, as amended, sec. 188 of WIOA, and the regulations implementing these statutory provisions.

(4) No person may discriminate against an individual who is a participant in a program or activity that receives funds under title I of WIOA, with respect to the terms and conditions affecting, or rights provided to, the individual, solely because of the status of the individual as a participant.

(5) Participation in programs and activities or receiving funds under title I of WIOA must be available to citizens and nationals of the United States, lawfully admitted permanent resident aliens, refugees, asylees, and parolees, and other immigrants authorized by the Attorney General to

work in the United States.

(b)(1) 29 CFR part 2, subpart D governs the circumstances under which recipients may use Department support, including WIOA title I and Wagner-Peyser Act financial assistance, to employ or train participants in religious activities. As explained in that subpart, such assistance may be used for such employment or training only when the assistance is provided indirectly within the meaning of the Establishment Clause of the U.S. Constitution, and not when the assistance is provided directly. As explained in that subpart, assistance provided through an Individual Training Account is generally considered indirect, and other mechanisms may also be considered indirect. See also § 683.255 and 29 CFR 37.6(f)(1).

(2) 29 CFR part 2, subpart D also contains requirements related to equal treatment of religious organizations in Department of Labor programs, and to protection of religious liberty for Department of Labor social service providers and beneficiaries. Limitations on the employment of participants under WIOA title I to carry out the construction, operation, or maintenance of any part of any facility used or to be used for religious instruction or as a place of religious worship are described at 29 CFR 37.6(f)(2). See also WIOA sec. 188(a)(3).

§ 683.290 Are there salary and bonus restrictions in place for the use of title I and

Wagner-Peyser funds?

(a) No funds available under title I of WIOA or the Wagner-Peyser Act may be used by a

recipient or subrecipient of such funds to pay the salary and bonuses of an individual, either as direct costs or indirect costs, at a rate in excess of the annual rate of basic pay prescribed for level II of the Executive Schedule under 5 U.S.C. 5313, which can be found at www.opm.gov.

(b) In instances where funds awarded under title I of WIOA or the Wagner-Peyser Act pay only a portion of the salary or bonus, the WIOA title I or Wagner-Peyser Act funds may only be charged for the share of the employee's salary or bonus attributable to the work performed on the WIOA title I or Wagner-Peyser Act grant. That portion cannot exceed the proportional Executive level II rate. The restriction applies to the sum of salaries and bonuses charged as either direct costs or indirect costs under title I of WIOA and the Wagner-Peyser Act.

(c) The limitation described in paragraph (a) of this section will not apply to contractors (as defined in 2 CFR 200.23) providing goods and services. In accordance with 2 CFR part 200.330, characteristics indicative of contractor are the following:

(1) Provides the goods and services within normal business operations;

(2) Provides similar goods or services to many different purchasers;

(3) Normally operates in a competitive environment;

(4) Provides goods or services that are ancillary to the operation of the Federal program;

and

(5) Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.

(d) If a State is a recipient of such funds, the State may establish a lower limit than is provided in paragraph (a) of this section for salaries and bonuses of those receiving salaries and bonuses from a subrecipient of such funds, taking into account factors including the relative cost of living in the State, the compensation levels for comparable State or local government employees, and the size of the organizations that administer the Federal programs involved.

(e)) When an individual is working for the same recipient or subrecipient in multiple offices that are funded by title I of WIOA or the Wagner-Peyser Act, the recipient or subrecipient must ensure that the sum of the individual's salary and bonus does not exceed the prescribed limit in paragraph (a) of this section.

§ 683.295 Is earning of profit allowed under the Workforce Innovation and Opportunity

Act?

(a)(1) Under secs. 121(d) and 134(b) of WIOA, for-profit entities are eligible to be one-stop operators, service providers, and eligible training providers.

(2) Where for-profit entities are one-stop operators, service providers, and eligible training providers, and those entities are recipients of Federal financial assistance, the recipient or

subrecipient and the for-profit entity must follow 2 CFR 200.323.

(3) Where for-profit entities are one-stop operators, service providers, and eligible training providers, and those entities are providing services under a contract, profit is allowable, and the requirements of 2 CFR 200.323 apply.

(b) For programs authorized by other sections of WIOA, 2 CFR 200.400(g) prohibits earning and keeping of profit in Federal financial assistance unless expressly authorized by the terms and conditions of the Federal award.

(c) Income earned by a public or private nonprofit entity may be retained by such entity only if such income is used to continue to carry out the program. (WIOA sec. 194(7)).

Subpart C—Reporting Requirements

§ 683.300 What are the reporting requirements for programs funded under the Workforce Innovation and Opportunity Act?

(a) General. All States and other direct grant recipients must report financial,

participant, and other performance data in accordance with instructions issued by the Secretary. Reports, records, plans, or any other data required to be submitted or made available must, to the extent practicable, be submitted or made available through electronic means. Reports will not be required to be submitted more frequently than quarterly (unless otherwise specified by Congress) within a time period specified in the reporting instructions.

(b) Subrecipient reporting. (1) For the annual eligible training provider performance reports described in § 677.230 of this chapter and local area performance reports described in § 677.205 of this chapter, the State must require the template developed under WIOA sec. 116(d)(1) to be used.

(2) For financial reports and performance reports other than those described in paragraph (b)(1) of this section, a State or other grant recipient may impose different forms or formats, shorter due dates, and more frequent reporting requirements on subrecipients.

(3) If a State intends to impose different reporting requirements on subrecipients, it must describe those reporting requirements in its State WIOA Plan.

(c) Financial reports. (1) Each grant recipient must submit financial reports on a quarterly basis.

(2) Local Boards will submit quarterly financial reports to the Governor.

(3) Each State will submit to the Secretary a summary of the reports submitted to the Governor pursuant to paragraph (c)(2) of this section.

(4) Reports must include cash on hand, obligations, expenditures, any income or profits earned, including such income or profits earned by subrecipients, indirect costs, recipient share of expenditures and any expenditures incurred (such as stand-in costs) by the recipient that are otherwise allowable except for funding limitations.

(5) Reported expenditures, matching funds, and program income, including any profits earned, must be reported on the accrual basis of accounting and cumulative by fiscal year of appropriation. If the recipient's accounting records are not normally kept on the accrual basis of accounting, the recipient must develop accrual information through an analysis of the documentation on hand.

(d) Performance reports. (1) States must submit an annual performance report for each

of the core workforce programs administered under WIOA as required by sec. 116(d) of WIOA and in accordance with 20 CFR part 667, subpart A.

(2) For all programs authorized under subtitle D of WIOA, each grant recipient must complete reports on performance measures or goals specified in its grant agreement.

(e) Due date. (1) For the core programs, performance reports are due on the date set

forth in guidance.

(2) Financial reports and all performance and data reports not described in paragraph (e)(1) of this section are due no later than 45 days after the end of each quarter unless otherwise specified in reporting instructions. A final financial report is required 90 days after the expiration of a period of performance or period of fund availability (whichever comes first) and/or termination of the grant.

(f) Format. All reports whenever practicable should be collected, transmitted, and stored

in open and machine readable formats.

(g) Systems compatibility. States and grant recipients will develop strategies for

aligning data systems based upon guidelines issued by the Secretary of Labor and the Secretary of Education.

Subpart D—Oversight and Resolution of Findings

§ 683.400 What are the Federal and State monitoring and oversight responsibilities?

(a) The Secretary is authorized to monitor all recipients and subrecipients of all Federal financial assistance awarded and funds expended under title I of WIOA and Wagner-Peyser to determine compliance with the Acts and Department regulations, and may investigate any matter deemed necessary to determine such compliance. Federal oversight will be conducted primarily at the recipient level.

(b) As funds allow, in each fiscal year, the Secretary will also conduct in-depth reviews in several States, including financial and performance monitoring, to assure that funds are spent in accordance with the Acts.

(c)(1) Each recipient and subrecipient must monitor grant-supported activities in

accordance with 2 CFR part 200.

(2) In the case of grants under secs. 128 and 133 of WIOA, the Governor must develop a State monitoring system that meets the requirements of § 683.410(b). The Governor must monitor Local Boards and regions annually for compliance with applicable laws and regulations in accordance with the State monitoring system. Monitoring must include an annual review of each local area's compliance with 2 CFR part 200.

(d) Documentation of monitoring, including monitoring reports and audit work papers, conducted under paragraph (c) of this section, along with corrective action plans, must be made available for review upon request of the Secretary, Governor, or a representative of the Federal government authorized to request the information.

§ 683.410 What are the oversight roles and responsibilities of recipients and subrecipients

of Federal financial assistance awarded under title I of the Workforce Innovation and Opportunity Act and Wagner-Peyser?

(a) Each recipient and subrecipient of funds under title I of WIOA and under Wagner-Peyser must conduct regular oversight and monitoring of its WIOA and Wagner-Peyser program(s) and those of its subrecipients and contractors as required under title I of WIOA and Wagner-Peyser, as well as under 2 CFR part 200, including 2 CFR 200.327, 200.328, 200.330, 200.331, and Department exceptions at 2 CFR part 2900, in order to:

(1) Determine that expenditures have been made against the proper cost categories and within the cost limitations specified in the Act and the regulations in this part;

(2) Determine whether there is compliance with other provisions of the Act and the WIOA regulations and other applicable laws and regulations;

(3) Assure compliance with 2 CFR part 200; and

(4) Determine compliance with the nondiscrimination, disability, and equal opportunity requirements of sec. 188 of WIOA, including the Assistive Technology Act of 1998 (29 U.S.C. 3003).

(b) State roles and responsibilities for grants under secs. 128 and 133 of WIOA:

(1) The Governor is responsible for the development of the State monitoring system. The Governor must be able to demonstrate, through a monitoring plan or otherwise, that the State monitoring system meets the requirements of paragraph (b)(2) of this section.

(2) The State monitoring system must:

(i) Provide for annual on-site monitoring reviews of local areas' compliance with 2 CFR part 200, as required by sec. 184(a)(3) of WIOA;

(ii) Ensure that established policies to achieve program performance and outcomes meet the objectives of the Act and the WIOA regulations;

(iii) Enable the Governor to determine if subrecipients and contractors have demonstrated substantial compliance WIOA and Wagner-Peyser requirements;

(iv) Enable the Governor to determine whether a local plan will be disapproved for failure to make acceptable progress in addressing deficiencies, as required in sec. 108(e) of WIOA; and

(v) Enable the Governor to ensure compliance with the Nondiscrimination, disability, and equal opportunity requirements of sec. 188 of WIOA, including the Assistive Technology Act of 1998 (29 U.S.C. 3003).

(3) The State must conduct an annual on-site monitoring review of each local area's compliance with 2 CFR part 200, as required by sec. 184(a)(4) of WIOA.

(4) The Governor must require that prompt corrective action be taken if any substantial violation of standards identified in paragraphs (b)(2) or (3) of this section is found (WIA sec. 184(a)(5))

(5) The Governor must impose the sanctions provided in secs. 184(b)-(c) of WIOA in the event of a subrecipient's failure to take required corrective action required under paragraph (b)(4) of this section.

(6) The Governor may issue additional requirements and instructions to subrecipients on monitoring activities.

(7) The Governor must certify to the Secretary every 2 years that:

(i) The State has implemented 2 CFR part 200;

(ii) The State has monitored local areas to ensure compliance with 2 CFR part 200, including annual certifications and disclosures as outlined in 2 CFR 200.113, Mandatory Disclosures. Failure to do so may result in remedies described under 2 CFR 200.338, including suspension and debarment; and

(iii) The State has taken appropriate corrective action to secure such compliance (WIOA secs. 184 and 188).

§ 683.420 What procedures apply to the resolution of findings arising from audits.

investigations, monitoring, and oversight reviews?

(a) Resolution of subrecipient-level findings. (1) The Governor or direct grant recipient

is responsible for resolving findings that arise from the monitoring reviews, investigations, other Federal monitoring reviews, and audits (including under 2 CFR part 200) of subrecipients awarded funds through title I of WIOA or Wagner-Peyser.

(i) A State or direct grant recipient must utilize the written monitoring and audit resolution, debt collection and appeal procedures that it uses for other Federal grant programs.

(ii) If a State or direct grant recipient does not have such written procedures, it must prescribe standards and procedures to be used for this grant program.

(2) For subrecipients awarded funds through a recipient of grant funds under subtitle D of title I of WIOA, the direct recipient of the grant funds must have written monitoring and resolution procedures in place that are consistent with 2 CFR part 200.

(b) Resolution of State and other direct recipient-level findings. (1) The Secretary is

responsible for resolving findings that arise from Federal audits, monitoring reviews, investigations, incident reports, and audits under 2 CFR part 200 for direct recipients of Federal awards under title I of WIOA and Wagner Peyser.

(2) The Secretary will use the Department audit resolution process, consistent with 2 CFR part 200 (and Department modifications at 2 CFR part 2900), and Grant Officer Resolution

provisions of § 683.440, as appropriate.

(3) A final determination issued by a Grant Officer under this process may be appealed to the DOL Office of Administrative Law Judges under the procedures at § 683.800.

(c) Resolution of nondiscrimination findings. Findings arising from investigations or reviews conducted under nondiscrimination laws will be resolved in accordance with WIOA sec. 188 of WIOA and the Department of Labor nondiscrimination regulations implementing sec. 188 of WIOA, codified at 29 CFR part 37.

§ 683.430 How does the Secretary resolve investigative and monitoring findings?

(a) As a result of an investigation, on-site visit, other monitoring, or an audit (i.e., Single Audit, OIG Audit, GAO Audit, or other audit), the Secretary will notify the direct recipient of the Federal award of the findings of the investigation and give the direct recipient a period of time (not more than 60 days) to comment and to take appropriate corrective actions.

(1) Adequate resolution. The Grant Officer in conjunction with the Federal project officer, reviews the complete file of the monitoring review, monitoring report, or final audit report and the recipient's response and actions under this paragraph (a). The Grant Officer's

review takes into account the sanction provisions of secs. 184(b)-(c) of WIOA. If the Grant Officer agrees with the recipient's handling of the situation, the Grant Officer so notifies the recipient. This notification constitutes final agency action.

(2) Inadequate resolution. If the direct recipient's response and actions to resolve the findings are found to be inadequate, the Grant Officer will begin the Grant Officer resolution process under § 683.440.

(b) Audits from 2 CFR part 200 will be resolved through the Grant Officer resolution process, as discussed in § 683.440.

§ 683.440 What is the Grant Officer resolution process?

(a) General. When the Grant Officer is dissatisfied with the a recipient's disposition of an audit or other resolution of findings (including those arising out of site visits, incident reports or compliance reviews), or with the recipient's response to findings resulting from investigations or monitoring reports, the initial and final determination process as set forth in this section is used to resolve the matter.

(b) Initial determination. The Grant Officer makes an initial determination on the findings for both those matters where there is agreement and those where there is disagreement

with the recipient's resolution, including the allowability of questioned costs or activities. This initial determination is based upon the requirements of WIOA, Wagner-Peyser, and applicable regulations, and the terms and conditions of the grants, contracts, or other agreements under the award.

(c) Informal resolution. Except in an emergency situation, when the Secretary invokes the authority described in sec. 184(e) of WIOA, the Grant Officer may not revoke a recipient's grant in whole or in part, nor institute corrective actions or sanctions, without first providing the recipient with an opportunity to present documentation or arguments to resolve informally those matters in dispute contained in the initial determination. The initial determination must provide for an informal resolution period of at least 60 days from issuance of the initial determination. If the matters are resolved informally, the Grant Officer must issue a final determination under paragraph (d) of this section which notifies the parties in writing of the nature of the resolution and may close the file.

(d) Final determination. (1) Upon completion of the informal resolution process, the Grant Officer provides each party with a written final determination by certified mail, return receipt requested. For audits of recipient-level entities and other recipients which receive WIOA funds directly from the Department, ordinarily, the final determination is issued not later than 180 days from the date that the Office of Inspector General (OIG) issues the final approved audit report to the Employment and Training Administration. For audits of subrecipients conducted by the OIG, ordinarily the final determination is issued not later than 360 days from the date the OIG issues the final approved audit report to ETA.

(2) A final determination under this paragraph (d) must:

(i) Indicate whether efforts to resolve informally matters contained in the initial determination have been unsuccessful;

(ii) List those matters upon which the parties continue to disagree;

(iii) List any modifications to the factual findings and conclusions set forth in the initial determination and the rationale for such modifications;

(iv) Establish a debt, if appropriate;

(v) Require corrective action, when needed;

(vi) Determine liability, method of restitution of funds, and sanctions; and

(vii) Offer an opportunity for a hearing in accordance with § 683.800.

(3) Unless a hearing is requested, a final determination under this paragraph (d) is final agency action and is not subject to further review.

Subpart E—Pay-for-Performance Contract Strategies

§ 683.500 What is a Workforce Innovation and Opportunity Act Pay-for-Performance

contract strategy?

(a) A WIOA Pay-for-Performance contract strategy is a specific type of performance-based contract strategy that has four distinct characteristics:

(1) It is a strategy to use WIOA Pay-for-Performance contracts as they are described in § 683.510;

(2) It must include the identification of the problem space and target populations for which a local area will pursue a WIOA Pay-for-Performance contract strategy; the outcomes the local area would hope to achieve through a Pay-for-Performance contract relative to baseline performance; the acceptable cost to government associated with implementing such a strategy; and a feasibility study to determine whether the intervention is suitable for a WIOA Pay-for- Performance contracting strategy;

(3) It must include a strategy for independently validating the performance outcomes achieved under each contract within the strategy prior to payment occurring;

(4) It must include a description of how the State or local area will reallocate funds to other activities under the contract strategy in the event a service provider does not achieve performance benchmarks under a WIOA Pay-for-Performance contract.

(b) The WIOA Pay-for-Performance contract strategy must be developed in accordance with guidance issued by the Secretary.

§ 683.510 What is a Workforce Innovation and Opportunity Act Pay-for-Performance

contract?

(a) Pay-for-Performance contract. A WIOA Pay-for-Performance contract is a type of Performance-Based contract.

(b) Applicability. WIOA Pay-for-Performance contracts may only be entered into when they are a part of a WIOA Pay-for-Performance contract strategy described in § 683.500.

(c) Cost-plus percentage contracts. Use of cost-plus percentage contracts is prohibited. (2 CFR 200.323.)

(d) Services provided. WIOA Pay-for-Performance contracts must be used to provide adult training services described in sec. 134(c)(3) of WIOA or youth activities described in sec. 129(c)(2) of WIOA.

(e) Structure of payment. WIOA Pay-for-Performance contracts must specify a fixed amount that will be paid to the service provider based on the achievement of specified levels of performance on the performance outcomes in sec. 116(b)(2)(A) of WIOA for target populations within a defined timetable. Outcomes must be independently validated, as described in §§ 683.500 and 683.510(j), prior to disbursement of funds.

(f) Eligible service providers. WIOA Pay-for-Performance contracts may be entered into with eligible service providers, which may include local or national community-based organizations or intermediaries, community colleges, or other training providers that are eligible under sec. 122 or 123 of WIOA (as appropriate). (WIOA sec. 3(47)(A))

(g) Target populations. WIOA Pay-for-Performance contracts must identify target populations as specified by the Local Board, which may include individuals with barriers to employment. (WIOA sec. 3(47)(A))

(h) Bonus and incentive payments. WIOA Pay-for-Performance contracts may include

bonus and/or incentive payments for the contractor, based on achievement of specified levels of performance.

(1) Bonus payments for achieving outcomes above and beyond those specified in the contract must be used by the service provider to expand capacity to provide effective training.

(2) Incentive payments must be consistent with incentive payments for performance-based contracting as described in the Federal Acquisition Regulations.

(i) Performance reporting. Performance outcomes achieved under the WIOA Pay-for-Performance contract, measured against the levels of performance specified in the contract, must be tracked by the local area and reported to the State pursuant to WIOA sec. 116(d)(2)(K) and § 677.160.

(j) Validation. WIOA Pay-for-Performance contracts must include independent validation of the contractor's achievement of the performance benchmarks specified in the contract. (WIOA sec. 3(47)(B)) This validation must be based on high-quality, reliable, and verified data.

(k) Guidance. The Secretary may issue additional guidance related to use of WIOA Pay-for-Performance contracts.

§ 683.520 What funds can be used to support Workforce Innovation and Opportunity Act

Pay-for-Performance contract strategies?

(a) For WIOA Pay-for-Performance contract strategies providing adults and dislocated worker training services, funds allocated under secs. 133(b)(2)-(3) of WIOA can be used. For WIOA Pay-for-Performance contract strategies providing youth activities, funds allocated under WIOA sec. 128(b) can be used.

(b) No more than 10 percent of the total local adult and dislocated worker allotments can be expended on the implementation of WIOA Pay-for-Performance contract strategies for adult training services described in sec. 134(c)(3) of WIOA. No more than 10 percent of the local youth allotment can be expended on the implementation of WIOA Pay-for-Performance contract strategies for youth training services and other activities described in secs. 129(c)(1)-(2) of WIOA.

§ 683.530 How long are funds used for Workforce Innovation and Opportunity Act Pay-

for-Performance contract strategies available?

Section 189(g)(2)(D) of WIOA authorizes funds used for WIOA Pay-for-Performance contract strategies to be available until expended. Under WIOA sec. 3(47)(C), funds that are

obligated but not expended due to a contractor not achieving the levels of performance specified in a WIOA Pay-for-Performance contract may be reallocated for further activities related to WIOA Pay-for-Performance contract strategies only. The Secretary will issue additional guidance related to the funds availability and reallocation.

§ 683.540 What is the State's role in assisting local areas in using Workforce Innovation

and Opportunity Act Pay-for-Performance contract strategies?

(a) Using funds from the Governor's reserve the State may:

(1) Provide technical assistance to local areas including assistance with structuring WIOA Pay-for-Performance contracting strategies, performance data collection, meeting performance data entry requirements, and identifying levels of performance.

(2) Conduct evaluations of local WIOA Pay-for-Performance contracting strategies, if appropriate.

(b) Using non-Federal funds, Governors may establish incentives for Local Boards to implement WIOA Pay-for-Performance contract strategies as described in this subpart.

(c) In the case of a State in which local areas are implementing WIOA Pay-for-Performance contract strategies, the State must:

(1) Collect and report to DOL data on the performance of service providers entering into WIOA Pay-for-Performance contracts, measured against the levels of performance benchmarks specified in the contracts, pursuant to sec. 116(d)(2)(K) of WIOA and § 677.160 and in accordance with any additional guidance issued by the Secretary.

(2) Collect and report to DOL State and/or local evaluations of the design and performance of the WIOA Pay-for-Performance contract strategies, and, where possible, the level of satisfaction with the strategies among employers and participants benefitting from the strategies, pursuant to sec. 116(d)(2)(K) of WIOA and § 677.160, and in accordance with any guidance issued by the Secretary.

(3) Monitor local areas' use of WIOA Pay-for-Performance contract strategies to ensure compliance with the five required elements listed in § 683.500, the contract specifications in § 683.510, and State procurement policies.

(4) Monitor local areas' expenditures to ensure that no more than 10 percent of a local area's adult and dislocated worker allotment and no more than 10 percent of a local area's youth allotments is expended on WIOA Pay-for-Performance contract strategies.

(d) The Secretary will issue additional guidance on State roles in WIOA Pay-for-Performance contract strategies.

Subpart F—Grievance Procedures, Complaints, and State Appeals Processes

§ 683.600 What local area, State, and direct recipient grievance procedures must be

established?

(a) Each local area, State, outlying area, and direct recipient of funds under title I of WIOA, except for Job Corps, must establish and maintain a procedure for participants and other interested parties to file grievances and complaints alleging violations of the requirements of title I of WIOA, according to the requirements of this section. The grievance procedure requirements applicable to Job Corps are set forth at 20 CFR 686.1050.

(b) Each local area, State, and direct recipient must:

(1) Provide information about the content of the grievance and complaint procedures required by this section to participants and other interested parties affected by the local Workforce Investment System, including one-stop partners and service providers;

(2) Require that every entity to which it awards title I funds provide the information referred to in paragraph (b)(1) of this section to participants receiving title I-funded services from such entities; and

(3) Must make reasonable efforts to assure that the information referred to in paragraph (b)(1) of this section will be understood by affected participants and other individuals, including youth and those who are limited-English speaking individuals. Such efforts must comply with the language requirements of 29 CFR 37.35 regarding the provision of services and information in languages other than English.

(c) Local area procedures must provide:

(1) A process for dealing with grievances and complaints from participants and other interested parties affected by the local Workforce Investment System, including one-stop partners and service providers;

(2) An opportunity for an informal resolution and a hearing to be completed within 60 days of the filing of the grievance or complaint;

(3) A process which allows an individual alleging a labor standards violation to submit the grievance to a binding arbitration procedure, if a collective bargaining agreement covering the parties to the grievance so provides; and

(4) An opportunity for a local level appeal to a State entity when:

(i) No decision is reached within 60 days; or

(ii) Either party is dissatisfied with the local hearing decision.

(d) State procedures must provide:

(1) A process for dealing with grievances and complaints from participants and other interested parties affected by the statewide Workforce Investment programs;

(2) A process for resolving appeals made under paragraph (c)(4) of this section;

(3) A process for remanding grievances and complaints related to the local Workforce Innovation and Opportunity Act programs to the local area grievance process; and

(4) An opportunity for an informal resolution and a hearing to be completed within 60 days of the filing of the grievance or complaint; and

(5) An opportunity for appeal to the Secretary under the circumstances described in § 683.610(a).

(e)) Procedures of direct recipients must provide:

(1) A process for dealing with grievance and complaints from participants and other interested parties affected by the recipient's Workforce Innovation and Opportunity Act programs; and

(2) An opportunity for an informal resolution and a hearing to be completed within 60 days of the filing of the grievance or complaint.

(f) The remedies that may be imposed under local, State and direct recipient grievance procedures are enumerated at WIOA sec. 181(c)(3).

(g)(1) The provisions of this section on grievance procedures do not apply to discrimination complaints brought under WIOA sec. 188 and/or 29 CFR part 37. Such complaints must be handled in accordance with the procedures set forth in that regulatory part.

(2) Questions about or complaints alleging a violation of the nondiscrimination provisions of WIOA sec. 188 may be directed or mailed to the Director, Civil Rights Center,

U.S. Department of Labor, Room N4123, 200 Constitution Avenue, NW, Washington, D.C.

20210, for processing.

(h) Nothing in this subpart precludes a grievant or complainant from pursuing a remedy authorized under another Federal, State or local law.

§ 683.610 What processes does the Secretary use to review grievances and complaints of

title I recipients?

(a) The Secretary investigates allegations arising through the grievance procedures described in § 683.600 when:

(1) A decision on a grievance or complaint under § 683.600(d) has not been reached within 60 days of receipt of the grievance or complaint or within 60 days of receipt of the request for appeal of a local level grievance and either party appeals to the Secretary; or

(2) A decision on a grievance or complaint under § 683.600(d) has been reached and the party to which such decision is adverse appeals to the Secretary.

(b) The Secretary must make a final decision on an appeal under paragraph (a) of this section no later than 120 days after receiving the appeal.

(c) Appeals made under paragraph (a)(2) of this section must be filed within 60 days of the receipt of the decision being appealed. Appeals made under paragraph (a)(1) of this section must be filed within 120 days of the filing of the grievance with the State, or the filing of the appeal of a local grievance with the State. All appeals must be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, 200 Constitution Ave. NW, Washington, DC 20210,

Attention: ASET. A copy of the appeal must be simultaneously provided to the appropriate ETA Regional Administrator and the opposing party.

(d) Except for complaints arising under WIOA sec. 184(f) or sec. 188, grievances or complaints made directly to the Secretary will be referred to the appropriate State or local area for resolution in accordance with this section, unless the Department notifies the parties that the Department of Labor will investigate the grievance under the procedures at § 683.430. Discrimination complaints brought under WIOA sec. 184(f) or sec. 188 or 29 CFR part 37 will be referred to the Director of the Civil Rights Center.

(e)) Complaints and grievances from participants receiving services under the Wagner-Peyser Act will follow the procedures outlined at 20 CFR 658.

§ 683.620 How are complaints and reports of criminal fraud and abuse addressed under

the Workforce Innovation and Opportunity Act?

(a) Information and complaints involving criminal fraud, waste, abuse or other criminal activity must be reported immediately through the Department's Incident Reporting System to the DOL Office of Inspector General, Office of Investigations, Room S5514, 200 Constitution Avenue NW., Washington, D.C. 20210, or to the corresponding Regional Inspector General for Investigations, with a copy simultaneously provided to the Employment and Training Administration. The Hotline number is 1-800-347-3756. The Web site is http://www.oig.dol.gov/contact.htm.

(b) Complaints of a non-criminal nature may be handled under the procedures set forth in § 683.600 or through the Department's Incident Reporting System.

§ 683.630 What additional appeal processes or systems must a State have for the

Workforce Innovation and Opportunity Act program?

(a) Non-designation of local areas:

(1) The State must establish, and include in its State Plan, due process procedures which provide expeditious appeal to the State Board for a unit of general local government (including a combination of such units) or grant recipient that requests, but is not granted, initial or subsequent designation of an area as a local area under WIOA sec. 106(b)(2) or 106(b)(3) and 20 CFR 679.250.

(2) These procedures must provide an opportunity for a hearing and prescribe

appropriate time limits to ensure prompt resolution of the appeal.

(3) If the appeal to the State Board does not result in designation, the appellant may request review by the Secretary under § 683.640.

(b) Denial or termination of eligibility as a training provider:

(1) A State must establish procedures which allow providers of training services the opportunity to appeal:

(i) Denial of eligibility by a Local Board or the designated State agency under WIOA sec. 122(b), 122(c), or 122(d).

(ii) Termination of eligibility or other action by a Local Board or State agency under WIOA sec. 122(f); or

(iii) Denial of eligibility as a provider of on-the-job training (OJT) or customized training by a one-stop operator under WIOA sec. 122(h).

(2) Such procedures must provide an opportunity for a hearing and prescribe appropriate time limits to ensure prompt resolution of the appeal.

(3) A decision under this State appeal process may not be appealed to the Secretary.

(c) Testing and sanctioning for use of controlled substances.

(1) A State must establish due process procedures, in accordance with WIOA sec. 181(f), which provide expeditious appeal for:

(i) Participants in programs under title I subtitle B of WIOA subject to testing for use of controlled substances, imposed under a State policy established under WIOA sec. 181(f)(1); and

(ii) Participants in programs under title I subtitle B of WIOA who are sanctioned, in accordance with WIOA sec. 181(f)(2), after testing positive for the use of controlled substances,

under the policy described in paragraph (c)(1)(i) of this section.

(2) A decision under this State appeal process may not be appealed to the Secretary.

§ 683.640 What procedures apply to the appeals of non-designation of local areas?

(a)) A unit of general local government (including a combination of such units) or grant recipient whose appeal of the denial of a request for initial or subsequent designation as a local workforce investment area to the State Board has not resulted in such designation, may appeal the State Board's denial to the Secretary.

(b) Appeals made under paragraph (a) of this section must be filed no later than 30 days after receipt of written notification of the denial from the State Board, and must be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, 200 Constitution Ave NW, Washington, DC 20210, Attention: ASET. A copy of the appeal must be simultaneously provided to the State Board.

(c) The appellant must establish that it was not accorded procedural rights under the appeal process set forth in the State Plan, or establish that it meets the requirements for designation in WIOA sec. 106(b)(2) or 106(b)(3) and 20 CFR 679.250.

(d) If the Secretary determines that the appellant has met its burden of establishing that it was not accorded procedural rights under the appeal process set forth in the State Plan, or that it meets the requirements for designation in WIOA sec. 106(b)(2) or 106(b)(3) and 20 CFR 679.250, the Secretary may require that the area be designated as a local workforce investment area. In making this determination the Secretary may consider any comments submitted by the State Board in

response to the appeal made under paragraph (a) of this section.

(e) The Secretary must issue a written decision to the Governor and the appellant.

§ 683.650 What procedures apply to the appeals of the Governor's imposition of sanctions

for substantial violations or performance failures by a local area?

(a)) A local area which has been found in substantial violation of WIOA title I, and has received notice from the Governor that either all or part of the local plan will be revoked or that a reorganization will occur, may appeal such sanctions to the Secretary under WIOA sec. 184(b). The appeal must be filed no later than 30 days after receipt of written notification of the revoked plan or imposed reorganization.

(b) The sanctions described in paragraph (a) of this section do not become effective

until:

(1) The time for appeal has expired; or

(2) The Secretary has issued the decision described in paragraph (e) of this section.

(c)) A local area which has failed to meet local performance accountability measures for 3 consecutive program years, and has received the Governor's notice of intent to impose a reorganization plan, may appeal to the Governor to rescind or revise such plan, in accordance with 20 CFR 677.225.

(d) Appeals to the Secretary made under paragraph (a) of this section must be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, 200 Constitution Ave. NW, Washington, DC 20210, Attention: ASET. A copy of the appeal must be simultaneously provided to the Governor.

(e) The Secretary will notify the Governor and the appellant in writing of the Secretary's decision under paragraph (a) of this section within 45 days after receipt of the appeal. In making this determination the Secretary may consider any comments submitted by the Governor in response to the appeals.

Subpart G—Sanctions, Corrective Actions, and Waiver of Liability

§ 683.700 When can the Secretary impose sanctions and corrective actions on recipients

and subrecipients of title I Workforce Innovation and Opportunity Act funds?

(a)(1) Except for actions under WIOA secs. 116 and 188(a) or 29 CFR parts 31, 32, 35, 37

and 49 CFR part 25, the Grant Officer must use the procedures outlined in § 683.440 before imposing a sanction on, or require corrective action by, recipients of funds under title I of WIOA.

(2) To impose a sanction or corrective action for a violation of WIOA sec. 188(a) the Department will use the procedures set forth in 29 CFR part 37.

(3) To impose a sanction or corrective action for a violation of WIOA sec. 116 the Department will use the procedures set forth in 20 CFR part 677.

(b) States. When a Grant Officer determines that the Governor has not fulfilled its requirements under 2 CFR part 200, an audit, or a monitoring compliance review set forth at sec. 184(a)(4) of WIOA and § 683.200(a), or has not taken corrective action to remedy a violation as required by WIOA secs. 184(a)(5) and 184(b)(1), the Grant Officer must require the Governor to impose the necessary corrective actions set forth at WIOA secs. 184(a)(5) and 184(b)(1), or may require repayment of funds under WIOA sec. 184(c). If the Secretary determines it is necessary to protect the funds or ensure the proper operation of a program or activity, the Secretary may immediately suspend or terminate financial assistance in accordance with WIOA sec. 184(e).

(c) Local areas. If the Governor fails to promptly take the actions specified in WIOA sec. 184(b)(1) when it determines that a local area has failed to comply with the requirements described in § 683.720(a), and that the local area has not taken the necessary corrective action, the Grant Officer may impose such actions directly against the local area.

(d) Direct grant recipients. When the Grant Officer determines that a direct grant

recipient of subtitle D of title I of WIOA has not taken corrective action to remedy a substantial violation as the result of noncompliance with 2 CFR part 200, the Grant Officer may impose sanctions against the grant recipient.

(e) Subrecipients. The Grant Officer may impose a sanction directly against a

subrecipient, as authorized in WIOA sec. 184(d)(3) and 2 CFR 200.338. In such a case, the Grant Officer will inform the direct grant recipient of the action.

§ 683.710 Who is responsible for funds provided under title I and Wagner-Peyser?

(a) The recipient of the funds is responsible for all funds under its grant(s) awarded under WIOA title I and the Wagner-Peyser Act.

(b)(1) The local government's chief elected official(s) in a local workforce investment area is liable for any misuse of the WIOA grant funds allocated to the local area under WIOA secs. 128 and 133, unless the chief elected official(s) reaches an agreement with the Governor to bear such liability.

(2) When a local workforce area or region is composed of more than one unit of general local government, the liability of the individual jurisdictions must be specified in a written agreement between the chief elected officials.

(3) When there is a change in the chief elected official(s), the Local Board is required to

inform the new chief elected official(s), in a timely manner, of their responsibilities and liabilities as well as the need to review and update any written agreements among the chief elected official(s).

(4) The use of a fiscal agent does not relieve the chief elected official, or Governor if designated under paragraph (b)(1) of this section, of responsibility for any misuse of grant funds allocated to the local area under WIOA secs. 128 and 133.

§ 683.720 What actions are required to address the failure of a local area to comply with

the applicable uniform administrative provisions?

(a) If, as part of the annual on-site monitoring of local areas, the Governor determines that a local area is not in compliance with 2 CFR part 200, including the failure to make the required disclosures in accordance with 2 CFR 200.113 or the failure to address all violations of Federal criminal law involving fraud, bribery or gratuity violations (2 CFR part 180), the Governor must:

(1) Require corrective action to secure prompt compliance; and

(2) Impose the sanctions provided for at WIOA sec. 184(b) if the Governor finds that the local area has failed to take timely corrective action.

(b) An action by the Governor to impose a sanction against a local area, in accordance with this section, may be appealed to the Secretary in accordance with § 683.650.

(c)(1) If the Secretary finds that the Governor has failed to monitor and certify compliance of local areas with the administrative requirements under WIOA sec. 184(a), or that the Governor has failed to take the actions promptly required upon a determination under paragraph (a) of this section, the Secretary must take the action described in § 683.700(b).

(2) If the Governor fails to take the corrective actions required by the Secretary under paragraph (c)(1) of this section, the Secretary may immediately suspend or terminate financial assistance under WIOA sec. 184(e).

§ 683.730 When can the Secretary waive the imposition of sanctions?

(a)(1) A recipient of title I funds may request that the Secretary waive the imposition of sanctions authorized under WIOA sec. 184.

(2) A Grant officer may approve the waiver described in paragraph (a)(1) of this section if the grant officer finds that the recipient has demonstrated substantial compliance with the requirements of WIOA sec. 184(d)(2).

(b)(1) When the debt for which a waiver is request was established in a non-Federal resolution proceeding, the resolution report must accompany the waiver request.

(2) When the waiver request is made during the ETA Grant Officer resolution process, the request must be made during the informal resolution period described in § 683.440(c).

(c)) A waiver of the recipient's liability must be considered by the Grant Officer only

when:

(1) The misexpenditure of WIOA funds occurred at a subrecipient's level;

(2) The misexpenditure was not due to willful disregard of the requirements of title I of the Act, gross negligence, failure to observe accepted standards of administration, and did not constitute fraud or failure to make the required disclosures in accordance with 2 CFR part

200.113 addressing all violations of Federal criminal law involving fraud, bribery or gratuity violations (2 CFR part 180 and 31 U.S.C 3321)

(3) If fraud did exist, was perpetrated against the recipient/subrecipients, and:

(i) The recipient/subrecipients discovered, investigated, reported, and cooperated in any prosecution of the perpetrator of the fraud; and

(ii) After aggressive debt collection action, it has been documented that further attempts at debt collection from the perpetrator of the fraud would be inappropriate or futile;

(4) The recipient has issued a final determination which disallows the misexpenditure, the recipient's appeal process has been exhausted, and a debt has been established; and

(5) The recipient provides documentation to demonstrate that it has substantially complied with the requirements of WIOA sec. 184(d)(2) and this section.

(d) The recipient will not be released from liability for misspent funds under the determination required by WIOA sec. 184(d) unless the Grant Officer determines that further collection action, either by the recipient or subrecipient(s), would be inappropriate or would prove futile.

§ 683.740 What is the procedure to handle a recipient of title I Workforce Innovation and

Opportunity Act funds' request for advance approval of contemplated corrective actions?

(a) The recipient may request advance approval from the Grant Officer for contemplated corrective actions, including debt collection actions, which the recipient plans to initiate or to forego. The recipient's request must include a description and an assessment of all actions taken to collect the misspent funds.

(b) Based on the recipient's request, the Grant Officer may determine that the recipient may forego certain debt collection actions against a subrecipient when:

(1) The subrecipient meets the criteria set forth in WIOA sec. 184(d)(2);

(2) The misexpenditure of funds:

(i) Was not made by that subrecipient but by an entity that received WIOA funds from that subrecipient;

(ii) Was not a violation of WIOA sec. 184(d)(1), did not constitute fraud, or failure to disclose, in a timely manner, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award; or

(iii) If fraud did exist,

(A) It was perpetrated against the subrecipient;

(B) The subrecipient discovered, investigated, reported, and cooperated in any prosecution of the perpetrator of the fraud; and

(C) After aggressive debt collection action, it has been documented that further attempts at debt collection from the perpetrator of the fraud would be inappropriate or futile;

(3) A determination which disallows the misexpenditure and establishes a debt has been issued at the appropriate level; and,

(4) Further debt collection action by that subrecipient or the recipient would be either inappropriate or futile.

§ 683.750 What procedure must be used for administering the offset/deduction provisions

of the Workforce Innovation and Opportunity Act?

(a)(1) For misexpenditures by direct recipients of title I and Wagner-Peyser formula funds the Grant Officer may determine that a debt, or a portion thereof, may be offset against amounts that are allotted to the recipient. Recipients must submit a written request for an offset to the Grant

Officer. Generally, the Grant Officer will apply the offset against amounts that are available at the recipient level for administrative costs.

(2) The Grant Officer may approve an offset request, under paragraph (a)(1) of this section, if the misexpenditures were not due to willful disregard of the requirements of the Act and regulations, fraud, gross negligence, failure to observe accepted standards of administration or a pattern of misexpenditure.

(b) For subrecipient misexpenditures that were not due to willful disregard of the requirements of the Act and regulations, fraud, gross negligence, failure to observe accepted standards of administration or a pattern of misexpenditure, if the Grant Officer has required the State to repay or offset such amount, the State may deduct an amount equal to the misexpenditure from the subrecipient's allocation of the program year after the determination was made. Deductions are to be made from funds reserved for the administrative costs of the local programs involved, as appropriate.

(c) If offset is granted, the debt will not be fully satisfied until the Grant Officer reduces amounts allotted to the recipient by the amount of the misexpenditure.

(d) For recipients of funds under title I and Wagner-Peyser funds, a direct recipient may not make a deduction under paragraph (b) of this section until the State has taken appropriate corrective action to ensure full compliance within the local area with regard to appropriate expenditure of WIOA funds.

Subpart H—Administrative Adjudication and Judicial Review

§ 683.800 What actions of the Department may be appealed to the Office of Administrative Law Judges?

(a) An applicant for financial assistance under title I of WIOA who is dissatisfied by a determination not to award Federal financial assistance, in whole or in part, to such applicant; or a recipient, subrecipient, or a contractor against which the Grant Officer has directly imposed a sanction or corrective action under sec. 184 of WIOA, including a sanction against a State under 20 CFR part 677, may appeal to the U.S. Department of Labor, Office of Administrative Law Judges (OALJ) within 21 days of receipt of the final determination.

(b) Failure to request a hearing within 21 days of receipt of the final determination constitutes a waiver of the right to a hearing.

(c)) A request for a hearing under this subpart must specifically state those issues or findings in the final determination upon which review is requested. Issues or findings in the final determination not specified for review, or the entire final determination when no hearing has been requested within the 21 days, are considered resolved and not subject to further review. Only alleged violations of the Act, its regulations, the grant or other agreement under the Act raised in the final

determination and the request for hearing are subject to review.

(d) A request for a hearing must be transmitted by certified mail, return receipt requested, to the Chief Administrative Law Judge, U.S. Department of Labor, Suite 400, 800 K Street, NW., Washington, DC 20001, with one copy to the Departmental official who issued the determination.

(e) The procedures in this subpart apply in the case of a complainant who has engaged in the alternative dispute resolution process set forth in § 683.840, if neither a settlement was reached nor a decision issued within the 60 days, except that the request for hearing before the OALJ must be filed within 15 days of the conclusion of the 60-day period provided in § 683.840. In addition to including the final determination upon which review is requested, the complainant must include a copy of any Stipulation of Facts and a brief summary of proceedings.

§ 683.810 What rules of procedure apply to hearings conducted under this subpart?

(a) Rules of practice and procedure. The rules of practice and procedure promulgated by the OALJ at subpart A of 29 CFR part 18, govern the conduct of hearings under this subpart. However, a request for hearing under this subpart is not considered a complaint to which the filing of an answer by the Department or a DOL agency or official is required. Technical rules of evidence will not apply to hearings conducted pursuant to this part. However, rules or principles designed to assure production of the most credible evidence available and to subject testimony to cross-examination will apply.

(b) Prehearing procedures. In all cases, the Administrative Law Judge (ALJ) should encourage the use of prehearing procedures to simplify and clarify facts and issues.

(c) Subpoenas. Subpoenas necessary to secure the attendance of witnesses and the production of documents or other items at hearings must be obtained from the ALJ and must be issued under the authority contained in WIOA sec. 183(c), incorporating 15 U.S.C. 49.

(d) Timely submission of evidence. The ALJ must not permit the introduction at the hearing of any documentation if it has not been made available for review by the other parties to the proceeding either at the time ordered for any prehearing conference, or, in the absence of such an order, at least 3 weeks prior to the hearing date.

(e) Burden of production. The Grant Officer has the burden of production to support her or his decision. This burden is satisfied once the Grant Officer prepares and files an administrative file in support of the decision which must be made part of the record. Thereafter, the party or parties seeking to overturn the Grant Officer's decision has the burden of persuasion.

§ 683.820 What authority does the Administrative Law Judge have in ordering relief as an

outcome of an administrative hearing?

(a) In ordering relief the ALJ has the full authority of the Secretary under the Act, except as described in paragraph (b) of this section.

(b) In grant selection appeals of awards funded under WIOA title I, subtitle D:

(1) If the Administrative Law Judge rules, under § 683.800, that the appealing organization should have been selected for an award, the matter must be remanded to the Grant Officer. The Grant Officer must, within 10 working days, determine whether the organization continues to meet the requirements of the applicable solicitation, whether the funds which are the subject of the ALJ's decision will be awarded to the organization, and the timing of the award. In making this determination, the Grant Officer must take into account disruption to participants, disruption to grantees, and the operational needs of the program.

(2) If the Administrative Law Judge rules that additional application review is required, the Grant Officer must implement that review and, if a new organization is selected, follow the steps laid out in paragraph (b)(1) of this section to determine whether the grant funds will be awarded to that organization.

(3) In the event that the Grant Officer determines that the funds will not be awarded to the appealing organization for the reasons discussed in paragraph (b)(1) of this section, an organization

which does not have an approved Negotiated Indirect Cost Rate Agreement will be awarded its reasonable application preparation costs.

(4) If funds are awarded to the appealing organization, the Grant Officer will notify the current grantee within 10 days. In addition, the appealing organization is not entitled to the full grant amount but will only receive the funds remaining in the grant that have not been obligated by the current grantee through its operation of the grant and its subsequent closeout.

(5) In the event that an organization, other than the appealing organization, is adversely effected by the Grant Officer's determination upon completion of the additional application review under paragraph (b)(2) of this section, that organization may appeal that decision to the Office of Administrative Law Judges by following the procedures set forth in § 683.800.

(6) Any organization selected and/or funded under WIOA title I, subtitle D, is subject to having its award removed if an ALJ decision so orders. As part of this process, the Grant Officer will provide instructions on transition and closeout to both the newly selected grantee and to the grantee whose position is affected or which is being removed. All awardees must agree to the provisions of this paragraph as a condition of accepting a grant award.

§ 683.830 When will the Administrative Law Judge issue a decision?

(a) The ALJ should render a written decision not later than 90 days after the closing of the record.

(b) The decision of the ALJ constitutes final agency action unless, within 20 days of the decision, a party dissatisfied with the ALJ's decision has filed a petition for review with the

Administrative Review Board (ARB) (established under Secretary's Order No. 02-2012), specifically identifying the procedure, fact, law or policy to which exception is taken. Any exception not specifically raised in the petition is deemed to have been waived. A copy of the petition for review must also be sent to the opposing party and if an applicant or recipient, to the Grant Officer and the Grant Officer's Counsel at the time of filing. Unless the ARB, within 30 days of the filing of the petition for review, notifies the parties that the case has been accepted for review, the decision of the ALJ constitutes final agency action. Any case accepted by the ARB must be decided within 180 days of acceptance. If not so decided, the decision of the ALJ constitutes final agency action.

§ 683.840 Is there an alternative dispute resolution process that may be used in place of an

Office of Administrative Law Judges hearing?

(a) The parties to a complaint which has been filed according to the requirements of § 683.800 may choose to waive their rights to an administrative hearing before the OALJ. Instead, they may choose to transfer the settlement of their dispute to an individual acceptable to all parties who will conduct an informal review of the stipulated facts and render a decision in

accordance with applicable law. A written decision must be issued within 60 days after submission of the matter for informal review.

(b) The waiver of the right to request a hearing before the OALJ described in paragraph

(a) of this section will automatically be revoked if a settlement has not been reached or a written decision has not been issued within the 60 days provided in paragraph (a) of this section.

(c) The decision rendered under this informal review process will be treated as a final decision of an Administrative Law Judge under WIOA sec. 186(b).

§ 683.850 Is there judicial review of a final order of the Secretary issued under WIOA?

(a) Any party to a proceeding which resulted in a Secretary's final order under WIOA sec. 186 in which the Secretary awards, declines to award, or only conditionally awards financial assistance or with respect to a corrective action or sanction imposed under WIOA sec. 184 may obtain a review in the United States Court of Appeals having jurisdiction over the applicant or recipient of funds involved, by filing a review petition within 30 days of the issuance of the Secretary's final order in accordance with WIOA sec. 187.

(b) The court has jurisdiction to make and enter a decree affirming, modifying, or setting aside the order of the Secretary, in whole or in part.

(c) No objection to the Secretary's order may be considered by the court unless the objection was specifically urged, in a timely manner, before the Secretary. The review is limited to questions of law, and the findings of fact of the Secretary are conclusive if supported by substantial evidence.

(d) The judgment of the court is final, subject to certiorari review by the United States Supreme Court.

11. Add part 684 to read as follows:

PART 684 – INDIAN AND NATIVE AMERICAN PROGRAMS UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

Subpart A—Purposes and Policies

Sec.

684.100 What is the purpose of the programs established to serve Indians and Native Americans under of the Workforce Innovation and Opportunity Act?

684.110 How must Indian and Native American programs be administered?

684.120 What obligation does the Department have to consult with the Indian and Native American program grantee community in developing rules, regulations, and standards of accountability for Indian and Native American programs?

684.130 What definitions apply to terms used in this part?

Subpart B—Service Delivery Systems Applicable to Section 166 Programs

Sec.

684.200 What are the requirements to apply for a Workforce Innovation and Opportunity Act grant?

684.210 What priority for awarding grants is given to eligible organizations?

684.220 What is the process for applying for a Workforce Innovation and Opportunity Act grant?

684.230 What appeal rights are available to entities that are denied a grant award?

684.240 Are there any other ways in which an entity may be awarded a Workforce Innovation and Opportunity Act grant?

684.250 Can an Indian and Native American program grantee's grant award be terminated?

684.260 Does the Department have to award a grant for every part of the country?

684.270 How are Workforce Innovation and Opportunity Act funds allocated to Indian and Native American program grantees?

Subpart C—Services to Customers

Sec.

684.300 Who is eligible to receive services under the Indian and Native American program?

684.310 What are Indian and Native American program grantee allowable activities?

684.320 Are there any restrictions on allowable activities?

684.330 What is the role of Indian and Native American program grantees in the one-stop system?

684.340 What policies govern payments to participants, including wages, training allowances or stipends, or direct payments for supportive services?

684.350 What will the Department do to strengthen the capacity of Indian and Native American program grantees to deliver effective services?

Subpart D—Supplemental Youth Services

Sec.

684.400 What is the purpose of the supplemental youth services program?

684.410 What entities are eligible to receive supplemental youth services funding?

684.420 What are the planning requirements for receiving supplemental youth services funding?

684.430 What individuals are eligible to receive supplemental youth services?

684.440 How is funding for supplemental youth services determined?

684.450 How will supplemental youth services be provided?

684.460 What performance measures are applicable to the supplemental youth services program?

Subpart E—Services to Communities

Sec.

684.500 What services may Indian and Native American program grantees provide to or for employers under the WIOA?

684.510 What services may Indian and Native American program grantees provide to the community at large under the WIOA?

684.520 Must Indian and Native American program grantees give preference to Indian and Native American entities in the selection of contractors or service providers?

684.530 What rules govern the issuance of contracts and/or subgrants?

Subpart F—Accountability for Services and Expenditures

Sec.

684.600 To whom is the Indian and Native American program grantee accountable for the provision of services and the expenditure of Indian and Native American funds?

684.610 How is this accountability documented and fulfilled?

684.620 What performance measures are in place for the Indian and Native American program?

684.630 What are the requirements for preventing fraud and abuse under the WIOA?

684.640 What grievance systems must an Indian and Native American program grantee provide?

684.650 Can Indian and Native American program grantees exclude segments of the eligible population?

Subpart G—Section 166 Planning/Funding Process

Sec.

684.700 What is the process for submitting a 4-year plan?

684.710 What information must be included in the 4-year plans as part of the competitive application?

684.720 When must the 4-year plan be submitted?

684.730 How will the Department review and approve such plans?

684.740 Under what circumstances can the Department or the Indian and Native American program grantee modify the terms of the grantee's plan(s)?

Subpart H—Administrative Requirements

Sec.

684.800 What systems must an Indian and Native American program grantee have in place to administer an Indian and Native American program?

684.810 What types of costs are allowable expenditures under the Indian and Native American program?

684.820 What rules apply to administrative costs under the Indian and Native American program?

684.830 Does the Workforce Innovation and Opportunity Act administrative cost limit for States and local areas apply to WIOA grants?

684.840 How should Indian and Native American program grantees classify costs?

684.850 What cost principles apply to Indian and Native American funds?

684.860 What audit requirements apply to Indian and Native American grants?

684.870 What is "program income" and how is it regulated in the Indian and Native American program?

Subpart I—Miscellaneous Program Provisions

Sec.

684.900 Does the Workforce Innovation and Opportunity Act provide regulatory and/or statutory waiver authority?

684.910 What information is required in a waiver request?

684.920 What provisions of law or regulations may not be waived?

684.930 May Indian and Native American program grantees combine or consolidate their employment and training funds?

684.940 What is the role of the Native American Employment and Training Council?

684.950 Does the Workforce Innovation and Opportunity Act provide any additional assistance to unique populations in Alaska and Hawaii?

Authority: Secs. 134, 166, 189, 503, Pub. L. 113-128, 128 Stat. 1425 (Jul. 22, 2014).

Subpart A—Purposes and Policies

§ 684.100 What is the purpose of the programs established to serve Indians and Native Americans under the Workforce Innovation and Opportunity Act?

(a) The purpose of WIOA INA programs in sec. 166 is to support employment and training activities for INAs in order to:

(1) Develop more fully the academic, occupational, and literacy skills of such individuals;

(2) Make such individuals more competitive in the workforce and to equip them with entrepreneurial skills necessary for successful self-employment; and

(3) Promote the economic and social development of INA communities in accordance with the goals and values of such communities.

(b) The principal means of accomplishing these purposes is to enable tribes and Native American organizations to provide employment and training services to INAs and their communities. Services should be provided in a culturally appropriate manner, consistent with the principles of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.). (WIOA sec. 166(a)(2)).

§ 684.110 How must Indian and Native American programs be administered?

(a) INA programs will be administered to maximize the Federal commitment to support the growth and development of INAs and their communities as determined by representatives of such communities.

(b) In administering these programs, the Department will follow the Congressional declaration of policy set forth in the Indian Self-Determination and Education Assistance Act, at 25 U.S.C. 450a, as well as the Department of Labor's "American Indian and Alaska Native Policies.

(c) The regulations in this part are not intended to abrogate the trust responsibilities of

the Federal government to federally-recognized tribes in any way.

(d) The Department will administer INA programs through a single organizational unit and

consistent with the requirements in sec. 166(i) of WIOA. The Division of Indian and Native American Programs (DINAP) within the Employment and Training Administration (ETA) is designated as this single organizational unit as required by sec. 166(i)(1) of WIOA.

(e) The Department will establish and maintain administrative procedures for the selection, administration, monitoring, and evaluation of INA employment and training programs authorized under this Act.

§ 684.120 What obligation does the Department have to consult with the Indian and Native

American grantee community in developing rules, regulations, and standards of

accountability for Indian and Native American programs?

The Department's primary consultation vehicle for INA programs is the Native American Employment and Training Council. The Department will consult with the INA grantee community in developing policies for the INA programs, actively seeking and considering the views of INA grantees prior to establishing INA program policies and regulations. (WIOA sec. 166(i)(4)). The Department will follow DOL's tribal consultation policy and Executive Order 13175 of November 6, 2000.

§ 684.130 What definitions apply to terms used in this part?

In addition to the definitions found in secs. 3 and 166 of WIOA, and 20 CFR 675.300, the following definitions apply:

Alaska Native-Controlled Organization means an organization whose governing board is comprised of 51 percent or more of individuals who are Alaska Native as defined in secs. 3(b) and 3(r) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b), (r)).

Carry-in means the total amount of funds unobligated by a grantee at the end of a program year. If the amount of funds unobligated by a grantee at the end of a program year is more than 20 percent of the grantee's "total funds available" for that program year, such excess amount is considered "excess carry-in."

DINAP means the Division of Indian and Native American Programs within the Employment and Training Administration of the U.S. Department of Labor.

Governing body means a body of representatives who are duly elected, appointed by duly elected officials, or selected according to traditional tribal means. A governing body must have the authority to provide services to and to enter into grants on behalf of the organization that selected or designated it.

Grant Officer means a U.S. Department of Labor official authorized to obligate Federal funds.

High-poverty area means a Census tract, a set of contiguous Census tracts, or a county or Indian reservation that has a poverty rate of at least 30 percent as set every 5 years using American Community Survey 5-Year data.

INA Grantee means an entity which is formally selected under subpart B of this part to operate an INA program and which has a grant agreement.

Incumbent Grantee means an entity that is currently receiving a grant under this subpart.

Indian and Native American or INA means, for the purpose of this part, an individual that is an American Indian, Native American, Native Hawaiian, or Alaska Native.

Indian-Controlled Organization means an organization whose governing board is

comprised of 51 percent or more individuals who are members of one or more Federally-

recognized tribes. Incumbent grantees who received funding under WIA can include members

of "State recognized tribes" in meeting the 51 percent threshold to continue to be eligible for WIOA sec. 166 funds as an Indian-Controlled Organization. Tribal Colleges and Universities meet the definition of Indian-Controlled Organization for the purposes of this regulation.

Native Hawaiian-Controlled Organization means an organization whose governing board

is comprised of 51 percent or more individuals who are Native Hawaiian as defined in sec. 7207 of the Native Hawaiian Education Act (20 U.S.C. 7517).

Total funds available means all funds that a grantee had "available" at the beginning of a

program year.

Underemployed means an individual who is working part-time but desires full-time

employment, or who is working in employment not commensurate with the individual's demonstrated level of educational and/or skill achievement.

Subpart B—Service Delivery Systems Applicable to Section 166 Programs

§ 684.200 What are the requirements to apply for a Workforce Innovation and Opportunity Act grant?

(a) To be eligible to apply for a WIOA, sec. 166 grant, an entity must have:

(1) Legal status as a government or as an agency of a government, private non-profit corporation, or a consortium whose members all qualify as one of these entities; and

(2) A new entity (which is not an incumbent grantee) must have a population within the designated geographic service area which would receive at least $100,000 under the funding formula found at § 684.270(b), including any amounts received for supplemental youth services under the funding formula at § 684.440(a). Incumbent grantees which do not meet this dollar threshold will be grandfathered in. Additionally, the Department will make an exception to the $100,000 minimum for grantees wishing to participate in the demonstration program under Pub.

L. 102-477 if all resources to be consolidated under the Pub. L. 102-477 plan total at least

$100,000, with at least $20,000 derived from sec. 166 funds. However, incumbent Pub. L. 102- 477 grantees that are receiving WIA funding of less than $20,000 as of the date of implementation of WIOA will be grandfathered into the program and can continue to be awarded the same amount.

(b) To be eligible to apply as a consortium, each member of the consortium must meet the requirements of paragraph (a) of this section and must:

(1) Be in close proximity to one another, but may operate in more than one State;

(2) Have an administrative unit legally authorized to run the program and to commit the other members to contracts, grants, and other legally-binding agreements; and

(3) Be jointly and individually responsible for the actions and obligations of the consortium, including debts.

(c) Entities eligible under paragraph (a)(1) of this section are:

(1) Federally-recognized Indian tribes;

(2) Tribal organizations, as defined in 25 U.S.C. 450b;

(3) Alaska Native-controlled organizations;

(4) Native Hawaiian-controlled organizations;

(5) Indian-controlled organizations serving INAs; and

(6) A consortium of eligible entities which meets the legal requirements for a consortium described in paragraph (b) of this section.

(d) State-recognized tribal organizations that meet the definition of an Indian-controlled organization are eligible to apply for WIOA sec. 166 grant funds. State-recognized tribes that do not meet this definition but are grantees under WIA will be grandfathered into WIOA as Indian-controlled organizations.

§ 684.210 What priority for awarding grants is given to eligible organizations?

(a) Federally-recognized Indian tribes, Alaska Native entities, or a consortium of such entities will have priority to receive grants under this part for those geographic service areas in which they have legal jurisdiction, such as an Indian reservation, Oklahoma Tribal Service Area (OTSA), or Alaska Native Village Service Area (ANVSA).

(b) If the Department decides not to make an award to an Indian tribe or Alaska Native entity that has legal jurisdiction over a service area, it will consult with such tribe or Alaska Native entity that has jurisdiction before selecting another entity to provide services for such areas.

(c) The priority described in paragraphs (a) and (b) of this section does not apply to service areas outside the legal jurisdiction of an Indian tribe or Alaska Native entity.

§ 684.220 What is the process for applying for a Workforce Innovation and Opportunity

Act grant?

(a) Entities seeking a WIOA sec. 166 grant, including incumbent grantees, will be provided an opportunity to apply for a WIOA sec. 166 grant every 4 years through a competitive grant process.

(b) As part of the competitive application process, applicants will be required to submit a 4-year plan as described at § 684.710. The requirement to submit a 4-year plan does not apply to entities that have been granted approval to transfer their WIOA funds to the Department of Interior pursuant to Pub. L. 102-477.

§ 684.230 What appeal rights are available to entities that are denied a grant award?

Any entity that is denied a grant award for which it applied in whole or in part may appeal

the denial to the Office of the Administrative Law Judges using the procedures at 20 CFR 683.800 or the alternative dispute resolution procedures at 20 CFR 683.840. The Grant Officer will provide an entity whose request for a grant award was denied, in whole or in part, with a copy of the appeal procedures.

§ 684.240 Are there any other ways in which an entity may be awarded a Workforce

Innovation and Opportunity Act grant?

Yes. For areas that would otherwise go unserved, the Grant Officer may designate an entity, which has not submitted a competitive application, but which meets the qualifications for a grant award, to serve the particular geographic area. Under such circumstances, DINAP will seek the views of INA leaders in the community that would otherwise go unserved before making the decision to designate the entity that would serve the community. DINAP will inform the Grant Officer of the INA leaders' views. The Grant Officer will accommodate views of INA leaders in such areas to the extent possible.

§ 684.250 Can an Indian and Native American grantee's grant award be terminated?

(a)) Yes, the Grant Officer can terminate a grantee's award for cause, or the Secretary or another Department of Labor official confirmed by the Senate can terminate a grantee's award in emergency circumstances where termination is necessary to protect the integrity of Federal funds or

ensure the proper operation of the program under sec. 184(e) of WIOA.

(b) The Grant Officer may terminate a grantee's award for cause only if there is a substantial or persistent violation of the requirements in WIOA or the WIOA regulations. The grantee must be provided with written notice 60 days before termination, stating the specific reasons why termination is proposed. The appeal procedures at 20 CFR 683.800 apply.

§ 684.260 Does the Department have to award a grant for every part of the country?

No, if there are no entities meeting the requirements for a grant award in a particular area, or willing to serve that area, the Department will not award funds for that service area. The funds that otherwise would have been allocated to that area under § 684.270 will be distributed to other INA program grantees, or used for other program purposes such as technical assistance and training (TAT). Unawarded funds used for technical assistance and training are in addition to, and not subject to the limitations on, amounts reserved under § 684.270(e). Areas which are unserved by the INA program may be restored during a subsequent grant award cycle, when and if a current grantee or other eligible entity applies for a grant award to serve that area.

§ 684.270 How are Workforce Innovation and Opportunity Act funds allocated to Indian

and Native American program grantees?

(a) Except for reserved funds described in paragraph (e) of this section and funds used for other program purposes under § 684.260, all funds available for WIOA sec. 166(d)(2)(A)(i) comprehensive workforce investment services program at the beginning of a program year will be allocated to INA program grantees for the geographic service area(s) awarded to them through the grant competition.

(b) Each INA program grantee will receive the sum of the funds calculated using the following formula:

(1) One-quarter of the funds available will be allocated on the basis of the number of unemployed American Indian, Alaska Native and Native Hawaiian individuals in the grantee's geographic service area(s) compared to all such unemployed persons in the United States.

(2) Three-quarters of the funds available will be allocated on the basis of the number of American Indian, Alaska Native and Native Hawaiian individuals in poverty in the grantee's geographic service area(s) as compared to all such persons in poverty in the United States.

(3) The data and definitions used to implement these formulas are provided by the U.S. Bureau of the Census.

(c) In years immediately following the use of new data in the formula described in paragraph (b) of this section, based upon criteria to be described in the Funding Opportunity Announcement (FOA), the Department may utilize a hold harmless factor to reduce the disruption in grantee services which would otherwise result from changes in funding levels. This factor will be determined in consultation with the grantee community and the Native American Employment and Training Council.

(d) The Department may reallocate funds from one INA program grantee to another if a

grantee is unable to serve its area for any reason, such as audit or debt problems, criminal activity, internal (political) strife, failure to adhere to or meet grant terms and conditions, or lack of ability or interest. If a grantee has excess carry-in for a program year, the Department may also readjust the awards granted under the funding formula so that an amount that equals the previous program year's carry-in will be allocated to another INA program grantee(s).

(e) The Department may reserve up to one percent of the funds appropriated under WIOA sec. 166(d)(2)(A)(i) for any program year for technical assistance and training (TAT) purposes. It will consult with the Native American Employment and Training Council in planning how the TAT funds will be used, designating activities to meet the unique needs of the INA communities served by the INA program. Section 166 grantees also will have access to

resources available to other Department programs to the extent permitted under other law.

Subpart C—Services to Customers

§ 684.300 Who is eligible to receive services under the Indian and Native American program?

(a)) A person is eligible to receive services under the INA program if that person is:

(1) An Indian, as determined by a policy of the INA program grantee. The grantee's definition must at least include anyone who is a member of a Federally-recognized tribe; or

(2) An Alaska Native, as defined in WIOA sec. 166(b)(1); or

(3) A Native Hawaiian, as defined in WIOA sec. 166(b)(3).

(b) The person also must be any one of the following:

(1) Unemployed; or

(2) Underemployed, as defined in § 684.130; or

(3) A low-income individual, as defined in sec. 3(36) of WIOA; or

(4) The recipient of a bona fide lay-off notice which has taken effect in the last 6 months or will take effect in the following 6-month period, who is unlikely to return to a previous industry or occupation, and who is in need of retraining for either employment with another employer or for job retention with the current employer; or

(5) An individual who is employed, but is determined by the grantee to be in need of employment and training services to obtain or retain employment that allows for self-sufficiency.

(c) If applicable, male applicants must also register or be registered for the Selective Service.

§ 684.310 What are Indian and Native American program grantee allowable activities?

(a) Generally, INA program grantees must make efforts to provide employment and training opportunities to eligible individuals (as described in § 684.300) who can benefit from, and who are most in need of, such opportunities. In addition, INA program grantees must make efforts to develop programs that contribute to occupational development, upward mobility, development of new careers, and opportunities for nontraditional employment (WIOA sec. 194(1)).

(b) Allowable activities for INA program grantees are any services consistent with the purposes of this part that are necessary to meet the needs of INAs preparing to enter, reenter, or retain unsubsidized employment leading to self-sufficiency (WIOA sec. 166(d)(1)(B)).

(c) Examples of career services, which may be delivered in partnership with the one-stop delivery system, are described in sec. 134(c)(2) of WIOA and § 678.430.

(d) Follow-up services, including counseling and supportive services for up to 12 months after the date of exit to assist participants in obtaining and retaining employment.

(e) Training services include the activities described in WIOA sec. 134(c)(3)(D).

(f) Allowable activities specifically designed for youth, as listed in sec. 129 of WIOA,

include:

(1) Tutoring, study skills training, instruction, and evidence-based dropout prevention and recovery strategies that lead to completion of the requirements for a secondary school diploma or its recognized equivalent (including a recognized certificate of attendance or similar document for individuals with disabilities) or for a recognized post-secondary credential;

(2) Alternative secondary school services, or dropout recovery services, as appropriate;

(3) Paid and unpaid work experiences that have as a component academic and occupational education, which may include:

(i) Summer employment opportunities and other employment opportunities available throughout the school year;

(ii) Pre-apprenticeship programs;

(iii) Internships and job shadowing; and

(iv) On-the-job training opportunities;

(4) Occupational skill training, which must include priority consideration for training programs that lead to recognized post-secondary credentials that are aligned with in-demand industry sectors or occupations in the local area involved;

(5) Education offered concurrently with and in the same context as workforce

preparation activities and training for a specific occupation or occupational cluster;

(6) Leadership development opportunities, which may include community service and peer-centered activities encouraging responsibility and other positive social and civic behaviors, as appropriate;

(7) Supportive services as defined in WIOA sec. 3(59);

(8) Adult mentoring for the period of participation and a subsequent period, for a total of not less than 12 months;

(9) Follow-up services for not less than 12 months after the completion of participation, as appropriate;

(10) Comprehensive guidance and counseling, which may include drug and alcohol abuse counseling and referral, as appropriate;

(11) Financial literacy education;

(12) Entrepreneurial skills training;

(13) Services that provide labor market and employment information about in-demand industry sectors or occupations available in the local area, such as career awareness, career counseling, and career exploration services; and

(14) Activities that help youth prepare for and transition to post-secondary education and training.

(g) In addition, allowable activities include job development and employment outreach, including:

(1) Support of the Tribal Employment Rights Office (TERO) program;

(2) Negotiation with employers to encourage them to train and hire participants;

(3) Establishment of linkages with other service providers to aid program participants;

(4) Establishment of management training programs to support tribal administration or enterprises; and

(5) Establishment of linkages with remedial education, such as Adult Basic Education (ABE), basic literacy training, and English-as-a-second-language (ESL) training programs, as necessary.

(h) Participants may be enrolled in more than one activity at a time and may be sequentially enrolled in multiple activities.

(i) Services may be provided to a participant in any sequence based on the particular needs of the participant.

§ 684.320 Are there any restrictions on allowable activities?

(a) Training services must be directly linked to an in-demand industry sector or

occupation in the service area, or in another area to which a participant receiving such services is willing to relocate (WIOA sec. 134(c)(3)(A)(i)(II)).

(b) INA grantees must provide On-the-Job Training (OJT) services consistent with the definition provided in WIOA sec. 3(44) and other limitations in WIOA. Individuals in OJT must:

(1) Be compensated at the same rates, including periodic increases, as trainees or employees who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills (WIOA sec. 181(a)(1)); and

(2) Be provided benefits and working conditions at the same level and to the same extent as other trainees or employees working a similar length of time and doing the same type of work. (WIOA sec. 181(b)(5))

(c) In addition, OJT contracts under this title must not be entered into with employers who have:

(1) Received payments under previous contracts under WIOA or the Workforce Investment Act of 1998 and have exhibited a pattern of failing to provide on-the-job training participants with continued, long-term employment as regular employees with wages and employment benefits (including health benefits) and working conditions at the same level and to the same extent as other employees working a similar length of time and doing the same type of work (WIOA sec. 194(4)); or

(2) Have exhibited a pattern of violating paragraphs (b)(1) and/or (2) of this section. (WIOA sec. 194(4)).

(d) INA program grantees are prohibited from using funds to encourage the relocation of a business, as described in WIOA sec. 181(d) and 20 CFR 683.260.

(e) INA program grantees must only use WIOA funds for activities that are in addition to those that would otherwise be available to the INA population in the area in the absence of such funds (WIOA sec. 194(2)).

(f) INA program grantees must not spend funds on activities that displace currently employed individuals, impair existing contracts for services, or in any way affect union organizing.

(g) Under 20 CFR 683.255, sectarian activities involving WIOA financial assistance or participants are limited in accordance with the provisions of sec. 188(a)(3) of WIOA.

§ 684.330 What is the role of Indian and Native American program grantees in the one-

stop system?

(a) In those local workforce investment areas where an INA program grantee conducts field operations or provides substantial services, the INA program grantee is a required partner in the local one-stop delivery system and is subject to the provisions relating to such partners described in 20 CFR part 678. Consistent with those provisions, a Memorandum of Understanding (MOU) between the INA program grantee and the Local Board over the operation of the one-stop center(s) in the Local Board's workforce investment area also must be executed. Where the Local Board is an alternative entity under 20 CFR 679.150, the INA program grantee must negotiate with the alternative entity on the terms of its MOU and the scope of its on-going role in the local workforce investment system, as specified in 20 CFR 679.410(b)(2). In local areas with a large concentration

of potentially eligible INA participants, which are in an INA program grantee's service area but in which the grantee does not conduct operations or provide substantial services, the INA program grantee should encourage such individuals to participate in

the one-stop system in that area in order to receive WIOA services.

(b) At a minimum, the MOU must contain to the provisions listed in WIOA sec. 121(c)

and:

(1) The exchange of information on the services available and accessible through the one-stop system and the INA program;

(2) As necessary to provide referrals and case management services, the exchange of information on INA participants in the one-stop system and the INA program;

(3) Arrangements for the funding of services provided by the one-stop(s), consistent with the requirements at 20 CFR 678.425 that no expenditures may be made with INA program funds for individuals who are not eligible or for services not authorized under this part.

(c)) Where the INA program grantee has failed to enter into a MOU with the Local Board, the INA program grantee must describe in its 4-year plan the good-faith efforts made in order to negotiate an MOU with the Local Board.

(d) Pursuant to WIOA sec. 121(h)(2)(D)(iv), INA program grantees will not be subject to the funding of the one-stop infrastructure unless otherwise agreed upon in the MOU under subpart C of 20 CFR part 678.

§ 684.340 What policies govern payments to participants, including wages, training

allowances or stipends, or direct payments for supportive services?

(a) INA program grantees may pay training allowances or stipends to participants for their successful participation in and completion of education or training services (except such allowance may not be provided to participants in OJT). Allowances or stipends may not exceed the Federal or State minimum wage, whichever is higher.

(b) INA program grantees may not pay a participant in a training activity when the

person fails to participate without good cause.

(c) If a participant in a WIOA-funded activity, including participants in OJT, is involved in an employer-employee relationship, that participant must be paid wages and fringe benefits at the same rates as trainees or employees who have similar training, experience and skills and which are not less than the higher of the applicable Federal, State or local minimum wage.

(d) In accordance with the policy described in the 4-year plan submitted as part of the competitive process, INA program grantees may pay incentive bonuses to participants who meet or exceed individual employability or training goals established in writing in the individual employment plan.

(e) INA program grantees must comply with other restrictions listed in WIOA secs. 181

through 195, which apply to all programs funded under title I of WIOA, including the provisions on labor standards in WIOA sec. 181(b).

§ 684.350 What will the Department do to strengthen the capacity of Indian and Native

American program grantees to deliver effective services?

The Department will provide appropriate technical assistance and training (TAT), as necessary, to INA program grantees. This TAT will assist INA program grantees to improve program performance and improve the quality of services to the target population(s), as resources permit. (WIOA sec. 166(i)(5))

Subpart D—Supplemental Youth Services

§ 684.400 What is the purpose of the supplemental youth services program?

The purpose of this program is to provide supplemental employment and training and related services to low-income INA youth on or near Indian reservations and in Oklahoma, Alaska, or Hawaii. (WIOA sec. 166(d)(2)(A)(ii))

§ 684.410 What entities are eligible to receive supplemental youth services funding?

Entities eligible to receive supplemental youth services funding are limited to Federally-recognized tribes that have a land base in which they have legal jurisdiction such as an Indian reservation, Oklahoma Tribal Service Area (OTSA), Alaska Native Village Service Area (ANVSA) etc., and Native Hawaiian organizations in the State of Hawaii. American Indian, Alaskan Native - controlled non-profit organizations may receive youth funding if they are providing services to an area where the Indian tribe or Alaska Native entity has legal jurisdiction on behalf of the tribe or entity with legal jurisdiction.

§ 684.420 What are the planning requirements for receiving supplemental youth services

funding?

Applicants eligible to apply for supplemental youth funding must describe the supplemental youth services they intend to provide in the 4-year ylan that they will submit as part of the competitive application process. The information on youth services will be incorporated into the overall 4-year plan, which is more fully described in §§ 684.700 and 684.710, and is required for both adult and youth funds. As indicated in § 684.710(c), additional planning information required for applicants requesting supplemental youth funding will be provided in the FOA. The Department envisions that the strategy for youth funds will not be extensive; however, grantees will be required

to provide the number of youth it plans to serve and projected performance outcomes. The Department also supports youth activities that preserve INA culture and will support strategies that promote INA values.

§ 684.430 What individuals are eligible to receive supplemental youth services?

(a)) Participants in supplemental youth services activities must be;

(1) American Indian, Alaska Native or Native Hawaiian as determined by the INA program grantee according to § 684.300(a);

(2) Between the age of 14 and 24; and

(3) A low-income individual as defined at WIOA sec. 3(36) except up to five percent of the participants during a program year in an INA youth program may not be low-income individuals provided they meet the eligibility requirements of paragraphs (a)(1) and (2) of this section.

(b) For the purpose of this section, the term ‘‘low-income’’, used with respect to an individual, also includes a youth living in a high-poverty area. (WIOA sec.129(a)(2))

§ 684.440 How is funding for supplemental youth services determined?

(a)) Supplemental youth funding will be allocated to eligible INA program grantees on the basis of the relative number of INA youth between the ages of 14 and 24 living in poverty in the grantee's geographic service area compared to the number of INA youth between the ages of 14 and 24 living in poverty in in all eligible geographic service areas. The Department reserves the right to

redefine the supplemental youth funding stream in future program years, in consultation with the Native American Employment and Training Council, as program experience warrants and as appropriate data become available.

(b) The data used to implement this formula are provided by the U.S. Bureau of the Census.

(c) The hold harmless factor described in § 684.270(c) also applies to supplemental youth services funding. This factor also will be determined in consultation with the grantee community and the Native American Employment and Training Council.

(d) The reallocation provisions of § 684.270(d) also apply to supplemental youth services funding.

(e) Any supplemental youth services funds not allotted to a grantee or refused by a grantee may be used for the purposes outlined in § 684.270(e), as described in § 684.260. Any such funds are in addition to, and not subject to the limitations on, amounts reserved under § 684.270(e).

§ 684.450 How will supplemental youth services be provided?

(a) INA program grantees may offer supplemental services to youth throughout the school year, during the summer vacation, and/or during other breaks during the school year at their discretion;

(b) The Department encourages INA program grantees to work with local educational agencies to provide academic credit for youth activities whenever possible;

(c) INA program grantees may provide participating youth with the activities referenced in § 684.310(e).

§ 684.460 What performance measures are applicable to the supplemental youth services

program?

(a)) Pursuant to WIOA secs. 166(e)(5) and 166(h), the performance measures at WIOA sec. 116(b)(2)(A)(ii) apply to the INA youth program which must include:

(1) The percentage of program participants who are in education or training activities, or in unsubsidized employment, during the second quarter after exit from the program;

(2) The percentage of program participants who are in education or training activities, or in unsubsidized employment, during the fourth quarter after exit from the program;

(3) The median earnings of program participants who are in unsubsidized employment during the second quarter after exit from the program;

(4) The percentage of program participants who obtain a recognized post-secondary credential, or a secondary school diploma or its recognized equivalent (subject to WIOA sec. 116(b)(2)(A)(iii)) during participation in or within 1 year after exit from the program;

(5) The percentage of program participants who, during a program year, are in an education or training program that leads to a recognized post-secondary credential or employment and who are achieving measurable skill gains toward such a credential or

employment;

(6) The indicators of effectiveness in serving employers established under WIOA sec. 116(b)(2)(A)(iv).

(b) In addition to the performance measures indicated in paragraphs (a)(1) through (6) of this section, the Secretary, in consultation with the Native American Employment and Training Council, must develop a set of performance indicators and standards that is in addition to the primary indicators of performance that are applicable to the INA program under this section.

Subpart E—Services to Communities

§ 684.500 What services may Indian and Native American grantees provide to or for employers under the WIOA?

(a) INA program grantees may provide a variety of services to employers in their areas. These services may include:

(1) Workforce planning which involves the recruitment of current or potential program participants, including job restructuring services;

(2) Recruitment and assessment of potential employees, with priority given to potential

employees who are or who might become eligible for program services;

(3) Pre-employment training;

(4) Customized training;

(5) On-the-Job training (OJT);

(6) Post-employment services, including training and support services to encourage job retention and upgrading;

(7) Work experience for public or private sector work sites;

(8) Other innovative forms of worksite training.

(b) In addition to the services listed in paragraph (a) of this section, other grantee-determined services (as described in the grantee's 4-year plan), which are intended to assist eligible participants to obtain or retain employment may also be provided to or for employers.

§ 684.510 What services may Indian and Native American grantees provide to the

community at large under the WIOA?

(a) INA program grantees may provide services to the INA communities in their service areas by engaging in program development and service delivery activities which:

(1) Strengthen the capacity of Indian-controlled institutions to provide education and work-based learning services to INA youth and adults, whether directly or through other INA institutions such as tribal colleges;

(2) Increase the community's capacity to deliver supportive services, such as child care, transportation, housing, health, and similar services needed by clients to obtain and retain employment;

(3) Use program participants engaged in education, training, work experience, or similar activities to further the economic and social development of INA communities in accordance with the goals and values of those communities; and

(4) Engage in other community-building activities described in the INA grantee's 4-year

plan.

(b) INA grantees program should develop their 4-year plan in conjunction with, and in support of, strategic tribal planning and community development goals.

§ 684.520 Must Indian and Native American program grantees give preference to Indian

and Native American entities in the selection of contractors or service providers?

Yes, INA program grantees must give as much preference as possible to Indian organizations and to Indian-owned economic enterprises, as defined in sec. 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452), when awarding any contract or subgrant.

§ 684.530 What rules govern the issuance of contracts and/or subgrants?

In general, INA program grantees must follow the rules of Uniform administrative requirements, Cost Principles, & Audit Requirements for Federal Awards when awarding contracts and/or subgrants under WIA sec. 166. These requirements are codified at 2 CFR part 200 subpart E. Common rules implementing those circulars are codified for Department-funded programs at 29 CFR part 97 (A-102) or 29 CFR part 95 (A-110), and covered in WIA regulations at 20 CFR 683.200. These rules do not apply to OJT contract awards.

Subpart F—Accountability for Services and Expenditures

§ 684.600 To whom is the Indian and Native American program grantee accountable for

the provision of services and the expenditure of Indian and Native American funds?

(a) The INA program grantee is responsible to the INA community to be served by INA funds.

(b) The INA program grantee is also responsible to the Department of Labor, which is charged by law with ensuring that all WIOA funds are expended:

(1) According to applicable laws and regulations;

(2) For the benefit of the identified INA client group; and

(3) For the purposes approved in the grantee's plan and signed grant document.

§ 684.610 How is this accountability documented and fulfilled?

(a) Each INA program grantee must establish its own internal policies and procedures to ensure accountability to the INA program grantee's governing body, as the representative of the INA community(ies) served by the INA program. At a minimum, these policies and procedures must provide a system for governing body review and oversight of program plans and measures and standards for program performance.

(b) Accountability to the Department is accomplished in part through on-site program reviews (monitoring), which strengthen the INA program grantee's capability to deliver effective services and protect the integrity of Federal funds.

(c) In addition to audit information, as described at § 684.860 and program reviews, accountability to the Department is documented and fulfilled by the submission of quarterly financial and program reports, and compliance with the terms and conditions of the grant award.

§ 684.620 What performance measures are in place for the Indian and Native American

program?

(a)) Pursuant to WIOA secs. 166(e)(5) and 166(h), the performance measures at WIOA sec. 116(b)(2)(A)(i) apply to the INA program which must include:

(1) The percentage of program participants who are in unsubsidized employment during the second quarter after exit from the program;

(2) The percentage of program participants who are in unsubsidized employment during the fourth quarter after exit from the program;

(3) The median earnings of program participants who are in unsubsidized employment during the second quarter after exit from the program;

(4) The percentage of program participants who obtain a recognized post-secondary credential, or a secondary school diploma or its recognized equivalent (subject to WIOA sec.

116(b)(2)(A)(iii)) during participation in or within 1 year after exit from the program;

(5) The percentage of program participants who, during a program year, are in an education or training program that leads to a recognized post-secondary credential or employment and who are achieving measurable skill gains toward such a credential or employment; and

(6) The indicators of effectiveness in serving employers established under WIOA sec. 116(b)(2)(A)(iv).

(b) In addition to the performance measures at WIOA sec. 116(b)(2)(A)(i), the Department, in consultation with the Native American Employment and Training Council, must develop a set of performance indicators and standards that are applicable to the INA program.

§ 684.630 What are the requirements for preventing fraud and abuse under the WIOA?

(a) INA program grantees must establish such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursal of, and accounting for, Federal funds. Such procedures must ensure that all financial transactions are conducted and records maintained in accordance with generally accepted accounting principles.

(b) Each INA program grantee must have rules to prevent conflict of interest by its governing body. These conflict of interest rules must include a rule prohibiting any member of any governing body or council associated with the INA program grantee from voting on any matter which would provide a direct financial benefit to that member, or to a member of his or her immediate family, in accordance with 20 CFR 683.200(a)(4) and 2 CFR 200 and 2900.

(c)) Officers or agents of the INA program grantee must not solicit or personally accept

gratuities, favors, or anything of monetary value from any actual or potential contractor, subgrantee, vendor or participant. This rule must also apply to officers or agents of the grantee's contractors and/or subgrantees. This prohibition does not apply to:

(1) Any rebate, discount or similar incentive provided by a vendor to its customers as a regular feature of its business;

(2) Items of nominal monetary value distributed consistent with the cultural practices of the INA community served by the grantee.

(d) No person who selects program participants or authorizes the services provided to them may select or authorize services to any participant who is such a person's spouse, parent, sibling, or child unless:

(1)(i) The participant involved is a low-income individual; or

(ii) The community in which the participant resides has a population of less than 1,000 INAs combined; and

(2) The INA program grantee has adopted and implemented the policy described in the 4-year plan to prevent favoritism on behalf of such relatives.

(e) INA program grantees are subject to the provisions of 41 U.S.C.8702 relating to kickbacks.

(f) No assistance provided under this Act may involve political activities (WIOA sec. 194(6)).

(g) INA program grantees must comply with the restrictions on lobbying activities pursuant to sec. 195 of WIOA and the restrictions on lobbying codified in the Department

regulations at 29 CFR part 93.

(h) The provisions of 18 U.S.C. 665 and 666 prohibiting embezzlement apply to programs under WIOA.

(i) Recipients of financial assistance under WIOA sec. 166 are prohibited from discriminatory practices as outlined at WIOA sec. 188, and the regulations implementing WIA sec. 188, at 29 CFR part 37. However, this does not affect the legal requirement that all INA participants be INAs. Also, INA program grantees are not obligated to serve populations outside the geographic boundaries for which they receive funds. However, INA program grantees are not precluded from serving eligible individuals outside their geographic boundaries if the INA program grantee chooses to do so.

§ 684.640 What grievance systems must an Indian and Native American program

granteeprovide?

INA program grantees must establish grievance procedures consistent with the requirements of WIOA sec. 181(c) and 20 CFR 683.600.

§ 684.650 Can Indian and Native American grantees exclude segments of the eligible

population?

(a) No, INA program grantees cannot exclude segments of the eligible population except as otherwise provided in this part. INA program grantees must document in their 4-year plan that a system is in place to afford all members of the eligible population within the service area for which the grantee was designated an equitable opportunity to receive WIOA services and activities.

(b) Nothing in this section restricts the ability of INA program grantees to target subgroups of the eligible population (for example, the disabled, substance abusers, TANF recipients, or similar categories), as outlined in an approved 4-year plan. However, it is unlawful to target services to subgroups on grounds prohibited by WIOA sec. 188 and 29 CFR part 37, including tribal affiliation (which is considered national origin). Outreach efforts, on the other hand, may be targeted to any subgroups.

Subpart G—Section 166 Planning/Funding Process

§ 684.700 What is the process for submitting a 4-year plan?

Every 4 years, INA program grantees must submit a 4-year strategy for meeting the needs of INAs in accordance with WIOA sec. 166(e). This plan will be part of, and incorporated with, the 4-year competitive process described in WIOA sec. 166(c) and § 684.220. Accordingly, specific requirements for the submission of a 4-year plan will be provided in a Funding Opportunity Announcement (FOA) and will include the information described at § 684.710.

§ 684.710 What information must be included in the 4-year plans as part of the competitive application?

(a) The 4-year plan, which will be submitted as part of the competitive process, must include the information required at WIOA secs. 166(e)(2)-(5) which are:

(1) The population to be served;

(2) The education and employment needs of the population to be served and the manner in which the activities to be provided will strengthen the ability of the individuals served to obtain or retain unsubsidized employment leading to self-sufficiency;

(3) A description of the activities to be provided and the manner in which such activities are to be integrated with other appropriate activities; and

(4) A description of the performance measures and expected levels of performance.

(b) The 4-year plan must also include any additional information requested in the FOA.

(c) INA program grantees receiving supplemental youth funds will be required to provide additional information (at a minimum the number of youth it plans to serve and the projected performance outcomes) in the 4-year plan that describes a strategy for serving low-income, INA youth. Additional information required for supplemental youth funding will be

identified in the FOA.

§ 684.720 When must the 4-year plan be submitted?

The 4-year plans will be submitted as part of the competitive FOA process described at §

684.220. Accordingly, the due date for the submission of the 4-year plan will be specified in the FOA.

§ 684.730 How will the Department review and approve such plans?

(a) It is the Department's intent to approve a grantee's 4-year strategic plan before the date on which funds for the program become available unless:

(1) The planning documents do not contain the information specified in the regulations in this part and/or the FOA; or

(2) The services which the INA program grantee proposes are not permitted under WIOA or applicable regulations.

(b) After competitive grant selections have been made, the DINAP office will assist INA grantees in resolving any outstanding issues with the 4-year plan. However, the Department may delay funding to grantees until all issues have been resolved. If the issues with the application of an incumbent grantee cannot be solved, the Department will reallocate funds from the grantee to other grantees that have an approved 4-year plan. The Grant Officer may delay executing a grant agreement and obligating funds to an entity selected through the competitive process until all the

required documents—including the 4-year plan—are in place and satisfactory.

(c) The Department may approve a portion of the plan and disapprove other portions.

(d) The grantee also has the right to appeal a nonselection decision or a decision by the Department to deny or reallocate funds based on unresolved issues with the applicant's application or 4-year plan. Such an appeal would go to the Office of the Administrative Law Judges under procedures at 20 CFR 683.800 or 683.840 in the case of a nonelection.

§ 684.740 Under what circumstances can the Department or the Indian and Native

American grantee modify the terms of the grantee's plan(s)?

(a) The Department may unilaterally modify the INA program grantee's plan to add funds or, if required by Congressional action, to reduce the amount of funds available for expenditure.

(b) The INA grantee may request approval to modify its plan to add, expand, delete, or

diminish any service allowable under the regulations in this part. The INA grantee may modify

its plan without our approval, unless the modification reduces the total number of participants to be served annually under the grantee's program by a number which exceeds 25 percent of the

participants previously proposed to be served, or by 25 participants, whichever is larger.

Subpart H—Administrative Requirements

§ 684.800 What systems must an Indian and Native American program grantee have in place to administer an Indian and Native American program?

(a) Each INA program grantee must have a written system describing the procedures the grantee uses for:

(1) The hiring and management of personnel paid with program funds;

(2) The acquisition and management of property purchased with program funds;

(3) Financial management practices;

(4) A participant grievance system which meets the requirements in sec. 181(c) of WIOA and 20 CFR 683.600; and

(5) A participant records system.

(b) Participant records systems must include:

(1) A written or computerized record containing all the information used to determine the person's eligibility to receive program services;

(2) The participant's signature certifying that all the eligibility information he or she provided is true to the best of his/her knowledge; and

(3) The information necessary to comply with all program reporting requirements.

§ 684.810 What types of costs are allowable expenditures under the Indian and Native

American program?

Rules relating to allowable costs under WIOA are covered in 20 CFR 683.200 through 683.215.

§ 684.820 What rules apply to administrative costs under the Indian and Native American

program?

The definition and treatment of administrative costs are covered in 20 CFR 683.205(b) and 683.215.

§ 684.830 Does the Workforce Innovation and Opportunity Act administrative cost limit

for States and local areas apply to WIOA grants?

No, under 20 CFR 683.205(b), limits on administrative costs for sec. 166 grants will be negotiated with the grantee and identified in the grant award document.

§ 684.840 How should Indian and Native American program grantees classify costs?

Cost classification is covered in the WIOA regulations at 20 CFR 683.200 through

683.215. For purposes of the INA program, program costs also include costs associated with other activities such as Tribal Employment Rights Office (TERO), and supportive services, as defined in WIOA sec. 3(59).

§ 684.850 What cost principles apply to Indian and Native American funds?

The cost principles at 2 CFR 200 subpart E of the Uniform Administrative Requirements, Cost Principles, & Audit Requirements for Federal Awards published December 26, 2013 apply to INA program grantees.

§ 684.860 What audit requirements apply to Indian and Native American grants?

(a) WIOA sec. 166 grantees must follow the audit requirements at 2 CFR 200 subpart F of the Uniform Administrative Requirements, Cost Principles, & Audit Requirements for Federal Awards published December 26, 2013.

(b) Grants made and contracts and cooperative agreements entered into under sec. 166 of WIOA are subject to the requirements of chapter 75 of subtitle V of title 31, United States Code, and charging of costs under this section are subject to appropriate circulars issued by the Office of Management and Budget (WIOA, sec. 166(j)).

§ 684.870 What is "program income" and how is it regulated in the Indian and Native

American program?

(a)) Program income is regulated by WIOA sec. 194(7)(A), 20 CFR 683.200(a)(5), and the applicable rules in 2 CFR parts 200 and 2900,

(b) For grants made under this part, program income does not include income generated by the work of a work experience participant in an enterprise, including an enterprise owned by an INA entity, whether in the public or private sector.

(c)) Program income does not include income generated by the work of an OJT participant in an establishment under paragraph (b) of this section.

Subpart I—Miscellaneous Program Provisions

§ 684.900 Does the Workforce Innovation and Opportunity Act provide regulatory and/or statutory waiver authority?

Yes, WIOA sec. 166(i)(3) permits waivers of any statutory or regulatory requirement of title I of WIOA that are inconsistent with the specific needs of the INA grantee (except for the areas cited in § 684.920). Such waivers may include those necessary to facilitate WIOA support of long-term community development goals.

§ 684.910 What information is required in a waiver request?

(a) To request a waiver, an INA program grantee must submit a waiver request indicating how the waiver will improve the grantee's WIOA program activities which must include the items specified at WIOA secs. 189(i)(3)(B)(i)-(v).

(b) A waiver may be requested at the beginning of a 4-year grant award cycle or anytime during a 4-year award cycle. However, all waivers expire at the end of the 4-year award cycle. INA program grantees seeking to continue an existing waiver in a new 4-year grant cycle must submit a new waiver request in accordance with § 684.910(a). This requirement also applies to grants transferred under Pub. L. 102-477.

§ 684.920 What provisions of law or regulations may not be waived?

Requirements relating to:

(a)) Wage and labor standards;

(b) Worker rights;

(c)) Participation and protection of workers and participants;

(d) Grievance procedures;

(e) Judicial review;

(f) Non-discrimination may not be waived.

§ 684.930 May Indian and Native American program grantees combine or consolidate

their employment and training funds?

Yes. INA program grantees may consolidate their employment and training funds under WIOA with assistance received from related programs in accordance with the provisions of the Pub. L. 102-477, the Indian Employment, Training, and Related Services Demonstration Act of 1992, as amended by Pub. L. 106-568, the Omnibus Indian Advancement Act of 2000 (25 U.S.C. 3401 et seq.). WIOA funds consolidated under Pub. L. 102-477 are administered by Department of Interior (DOI). Accordingly, the administrative oversight for funds transferred to DOI, including the reporting of financial expenditures and program outcomes are the responsibility of the DOI. However, the Department of Labor must review the initial 477 plan and ensure that all Departmental programmatic and financial obligations have been met before WIOA funds are approved to be transferred to DOI and consolidated with other related programs. The initial plan must meet the statutory requirements of WIOA. After approval of the initial plan, all subsequent plans that are

renewed or updated from the initial plan may be approved by the Department of Interior without further review by the Department.

§ 684.940 What is the role of the Native American Employment and Training Council?

The Native American Employment and Training Council is a body composed of representatives of the grantee community which advises the Secretary on the operation and administration of the INA employment and training program. WIOA sec. 166(i)(4) continues the Council essentially as it is currently constituted. The Department continues to support the Council.

§ 684.950 Does the Workforce Innovation and Opportunity Act provide any additional

assistance to unique populations in Alaska and Hawaii?

Yes. Notwithstanding any other provision of law, the Secretary is authorized to award grants, on a competitive basis, to entities with demonstrated experience and expertise in developing and implementing programs for the unique populations who reside in Alaska or Hawaii, including public and private nonprofit organizations, tribal organizations, American Indian tribal colleges or universities, institutions of higher education, or consortia of such organizations or institutions, to improve job training and workforce investment activities for such

unique populations. (WIOA, sec. 166(k))

12. Add part 685 to read as follows:

PART 685 – NATIONAL FARMWORKER JOBS PROGRAM UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

Subpart A—Purpose and Definitions

Sec.

685.100 What is the purpose of the National Farmworker Jobs Program and the other services and activities established under the Workforce Innovation and Opportunity Act?

685.110 What definitions apply to this program?

685.120 How does the Department administer the National Farmworker Jobs Program?

685.130 How does the Department assist grantees to serve eligible migrant and seasonal farmworkers?

685.140 What Workforce Innovation and Opportunity Act regulations apply to the programs authorized under the Workforce Innovation and Opportunity Act?

Subpart B—The Service Delivery System for the National Farmworker Jobs Program

Sec.

685.200 Who is eligible to receive a National Farmworker Jobs Program grant?

685.210 How does an eligible entity become a grantee?

685.220 What is the role of the grantee in the one-stop delivery system?

685.230 Can a grantee's designation be terminated?

685.240 How does the Department use funds appropriated under the Workforce Innovation and Opportunity Act for the National Farmworker Jobs Program?

Subpart C—The National Farmworker Jobs Program Services to Eligible Migrant and Seasonal Farmworkers

Sec.

685.300 What are the general responsibilities of grantees?

685.310 What are the basic components of an National Farmworker Jobs Program service delivery strategy?

685.320 Who is eligible to receive services under the National Farmworker Jobs Program?

685.330 How are services delivered to eligible migrant and seasonal farmworkers?

685.340 What career services must grantees provide to eligible migrant and seasonal farmworkers?

685.350 What training services must grantees provide to eligible migrant and seasonal farmworkers?

685.360 What housing services must grantees provide to eligible migrant and seasonal farmworkers?

685.370 What services may grantees provide to eligible migrant and seasonal farmworkers youth participants aged 14-24?

685.380 What related assistance services may be provided to eligible migrant and seasonal farmworkers?

685.390 When may eligible migrant and seasonal farmworkers receive related assistance?

Subpart D—Performance Accountability, Planning, and Waiver Provisions

Sec.

685.400 What are the indicators of performance that apply to the National Farmworker Jobs Program?

685.410 What planning documents must a grantee submit?

685.420 What information is required in the grantee program plan?

685.430 Under what circumstances are the terms of the grantee's program plan modified by the grantee or the Department?

685.440 How are costs classified under the National Farmworker Jobs Program?

685.450 What is the Workforce Innovation and Opportunity Act administrative cost limit for National Farmworker Jobs Program grants?

685.460 Are there regulatory and/or statutory waiver provisions that apply to the Workforce Innovation and Opportunity Act?

685.470 How can grantees request a waiver?

Subpart E—Supplemental Youth Workforce Investment Activity Funding Under the Workforce Innovation and Opportunity Act

Sec.

685.500 What is supplemental youth workforce investment activity funding?

685.510 What requirements apply to grants funded by the Workforce Innovation and Opportunity Act?

685.520 What is the application process for obtaining a grant funded by the Workforce Innovation and Opportunity Act?

685.530 What planning documents are required for grants funded by the Workforce

Innovation and Opportunity Act?

685.540 How are funds allocated to grants funded by the Workforce Innovation and Opportunity Act?

685.550 Who is eligible to receive services through grants funded by the Workforce Innovation and Opportunity Act?

Authority: Secs. 167, 189, 503, Pub. L. 113-128, 128 Stat. 1425 (Jul. 22, 2014).

Subpart A—Purpose and Definitions

§ 685.100 What is the purpose of the National Farmworker Jobs Program and the other services and activities established under the Workforce Innovation and Opportunity Act?

The purpose of the NFJP and the other services and activities established under WIOA sec. 167 is to strengthen the ability of eligible migrant and seasonal farmworkers (MSFWs) and their dependents to obtain or retain unsubsidized employment, stabilize their unsubsidized employment and achieve economic self-sufficiency, including upgraded employment in agriculture. This part provides the regulatory requirements applicable to the expenditure of WIOA secs. 167 and 127(a)(1) funds for such programs, services and activities.

§ 685.110 What definitions apply to this program?

In addition to the definitions found in 20 CFR 675.300, the following definitions apply to programs under this part:

Allowances means direct payments made to participants during their enrollment to enable them to participate in the career services described in WIOA sec. 134(c)(2)(A)(xii) or training services as appropriate.

Dependent means an individual who:

(1) Was claimed as a dependent on the eligible MSFW's Federal income tax return for the previous year; or

(2) Is the spouse of the eligible MSFW; or

(3) If not claimed as a dependent for Federal income tax purposes, is able to establish:

(i) A relationship as the eligible MSFW's;

(A)) Child, grandchild, great grandchild, including legally adopted children;

(B)) Stepchild;

(C) Brother, sister, half-brother, half-sister, stepbrother, or stepsister;

(D)) Parent, grandparent, or other direct ancestor but not foster parent;

(E) Foster child;

(F) Stepfather or stepmother;

(G) Uncle or aunt;

(H) Niece or nephew;

(I) Father-in-law, mother-in-law, son-in-law; or

(J) Daughter-in-law, brother-in-law, or sister-in-law; and

(ii) The receipt of over half of his/her total support from the eligible MSFW's family during the eligibility determination period.

Eligibility determination period means any consecutive 12-month period within the 24-month period immediately preceding the date of application for the MSFW program by the applicant MSFW.

Eligible migrant farmworker means an eligible seasonal farmworker as defined in WIOA sec. 167(i)(3) whose agricultural labor requires travel to a job site such that the farmworker is unable to return to a permanent place of residence within the same day; and dependents of the migrant farmworker, as described in WIOA 167(i)(2).

Eligible migrant and seasonal farmworker means an eligible migrant farmworker or an eligible seasonal farmworker, also referred to in this regulation as an "eligible MSFW," as defined in WIOA sec. 167(i).

Eligible MSFW youth means an eligible MSFW aged 14-24 who is individually eligible

or is a dependent of an eligible MSFW. The term eligible MSFW youth is a subset of the term eligible MSFW defined in this section.

Eligible seasonal farmworker means a low-income individual who for 12 consecutive months out of the 24 months prior to application for the program involved, has been primarily employed in agricultural or fish farming labor that is characterized by chronic unemployment or underemployment; and faces multiple barriers to economic self-sufficiency; and dependents of the seasonal farmworker as described in WIOA 167(i)(3).

Emergency assistance is a form of "related assistance" and means assistance that addresses immediate needs of eligible MSFWs and their dependents, provided by grantees. An applicant's self-certification is accepted as sufficient documentation of eligibility for emergency assistance.

Family, for the purpose of reporting housing assistance grantee indicators of performance as described in in § 685.400, means the eligible MSFW(s) and all the individuals identified

under the definition of dependent in this section who are living together in one physical residence.

Farmwork means work while employed in the occupations described in 20 CFR 651.10.

Grantee means an entity to which the Department directly awards a WIOA grant to carry out programs to serve eligible MSFWs in a service area, with funds made available under WIOA sec. 167 or 127(a)(1).

Housing assistance means housing-related services provided to eligible MSFWs.

Lower living standard income level means the income level as defined in WIOA sec. 3(36)(B).

Low-income individual means an individual as defined in WIOA sec. 3(36)(A).

MOU means Memorandum of Understanding.

National Farmworker Jobs Program (NFJP) is the Department of Labor-administered workforce investment program for eligible MSFWs established by WIOA sec. 167 as a required partner of the one-stop system and includes both career services and training grants, and housing grants.

Recognized post-secondary credential means a credential as defined in WIOA sec. 3(52).

Related assistance means short-term forms of direct assistance designed to assist eligible MSFWs retain or stabilize their agricultural employment. Examples of related assistance may include, but are not limited to, services such as transportation assistance or providing work clothing.

Self-certification means an eligible MSFW's signed attestation that the information he/she submits to demonstrate eligibility for the NFJP is true and accurate.

Service area means the geographical jurisdiction, which may be comprised of one or more designated State or sub-State areas, in which a WIOA sec. 167 grantee is designated to operate.

Technical assistance means the guidance provided to grantees and grantee staff by the

Department to improve the quality of the program and the delivery of program services to eligible MSFWs.

§ 685.120 How does the Department administer the National Farmworker Jobs Program?

The Department's Employment and Training Administration (ETA) administers NFJP activities required under WIOA sec. 167 for eligible MSFWs. As described in § 685.210, the Department designates grantees using procedures consistent with standard Federal government competitive procedures.

§ 685.130 How does the Department assist grantees to serve eligible migrant and seasonal

farmworkers?

The Department provides guidance, administrative support, technical assistance, and training to grantees for the purposes of program implementation, and program performance

management to enhance services and promote continuous improvement in the employment outcomes of eligible MSFWs.

§ 685.140 What regulations apply to the programs authorized under the Workforce

Innovation and Opportunity Act?

The regulations that apply to programs authorized under WIOA sec. 167 are:

(a) The regulations found in this part;

(b) The general administrative requirements found in 20 CFR part 683, including the regulations concerning Complaints, Investigations and Hearings found at 20 CFR part 683, subpart D through subpart H, which cover programs under WIOA sec. 167;

(c) Uniform Guidance at 2 CFR part 200 and the Department's exceptions at 2 CFR part 2900 pursuant to the effective dates in 2 CFR part 200 and 2 CFR part 2900;

(d) The regulations on partnership responsibilities contained in 20 CFR parts 679 (Statewide and Local Governance) and 678 (the One-Stop System); and

(e) The Department's regulations at 29 CFR part 37, which implement the nondiscrimination provisions of WIOA sec. 188.

Subpart B—The Service Delivery System for the National Farmworker Jobs Program

§ 685.200 Who is eligible to receive a National Farmworker Jobs Program grant?

To be eligible to receive a grant under this section, an entity must have:

(a) An understanding of the problems of eligible MSFWs;

(b) A familiarity with the agricultural industries and the labor market needs of the proposed service area;

(c) The ability to demonstrate a capacity to administer and deliver effectively a diversified program of workforce investment activities, including youth workforce investment activities, and related assistance for eligible MSFWs.

§ 685.210 How does an eligible entity become a grantee?

To become a grantee and receive a grant under this subpart, an applicant must respond to a Funding Opportunity Announcement (FOA). Under the FOA, grantees will be selected using standard Federal government competitive procedures. The entity's proposal must include a program plan, which is a 4-year strategy for meeting the needs of eligible MSFWs in the proposed service

area, and a description of the entities experience working with the broader workforce delivery system. Unless specified otherwise in the FOA, grantees may serve eligible MSFWs, including eligible MSFW youth, under the grant. An applicant whose application for funding as a grantee under this section is denied in whole or in part may request an administrative review under 20 CFR 683.800.

§ 685.220 What is the role of the grantee in the one-stop delivery system?

In those local workforce investment areas where the grantee operates its NFJP as described in its grant agreement, the grantee is a required one-stop partner, and is subject to the provisions relating to such partners described in 20 CFR part 678. Consistent with those provisions, the grantee and Local Workforce Development Board must develop and enter into an MOU which meets the requirements of 20 CFR 678.500, and which sets forth their respective responsibilities for providing access to the full range of NFJP services through the one-stop system to eligible MSFWs.

§ 685.230 Can a grantee's designation be terminated?

Yes, a grantee's designation may be terminated by the Department for cause: (a) in emergency circumstances when such action is necessary to protect the integrity of Federal funds or to ensure the proper operation of the program. Any grantee so terminated will be provided with written notice and an opportunity for a hearing within 30 days after the termination (WIOA sec. 184(e)); or (b) by the Department's Grant Officer, if the recipient materially fails to comply with the terms and conditions of the award. In such a case, the Grant Officer will follow the administrative regulations at 20 CFR 683.440.

§ 685.240 How does the Department use funds appropriated under the Workforce

Innovation and Opportunity Act for the National Farmworker Jobs Program?

At least 99 percent of the funds appropriated each year for WIOA sec. 167 activities must be allocated to service areas, based on the distribution of the eligible MSFW population determined under a formula established by the Secretary. The Department will use a percentage of the funds allocated for State service areas for housing grants, specified in a FOA issued by the Department. The Department will use up to one percent of the appropriated funds for discretionary purposes, such as technical assistance to eligible entities and other activities prescribed by the Secretary.

Subpart C—The National Farmworker Jobs Program Services to Eligible Migrant and Seasonal Farmworkers

§ 685.300 What are the general responsibilities of grantees?

(a) The Department awards career services and training grants and housing grants through the FOA process described in § 685.210. Career services and training grantees are responsible for providing appropriate career services, training, and related assistance to eligible

MSFWs. Housing grantees are responsible for providing housing assistance to eligible MSFWs.

(b) Grantees will provide these services in accordance with the service delivery strategy meeting the requirements of § 685.310 and as described in their approved program plan described in § 685.420. These services must reflect the needs of the MSFW population in the service area and include the services that are necessary to achieve each participant's employment goals or housing needs.

(c)) Grantees are responsible for coordinating services; particularly outreach to MSFWs, with the State Workforce Agency as defined in 20 CFR part 651 and the State's monitor advocate.

(d) Grantees are responsible for fulfilling the responsibilities of one-stop partners described in § 678.420.

§ 685.310 What are the basic components of an National Farmworker Jobs Program

service delivery strategy?

The NFJP service delivery strategy must include:

(a)) A customer-focused case management approach;

(b) The provision of workforce investment activities to eligible MSFWs which include career services and training, as described in WIOA secs. 167(d) and 134, and 20 CFR part 680.

(c) The provision of youth workforce investment activities described in WIOA sec. 129 and 20 CFR part 681 may be provided to eligible MSFW youth;

(d) The arrangements under the MOUs with the applicable Local Workforce Development Boards for the delivery of the services available through the one-stop system to MSFWs; and

(e)) Related assistance services.

§ 685.320 Who is eligible to receive services under the National Farmworker Jobs

Program?

Eligible migrant farmworkers (including eligible MSFW youth) and eligible seasonal farmworkers (including eligible MSFW youth) as defined in § 685.110 are eligible for services funded by the NFJP.

§ 685.330 How are services delivered to eligible migrant and seasonal farmworkers?

To ensure that all services are focused on the customer's needs, services are provided through a case-management approach emphasizing customer choice and may include: appropriate career services and training; related assistance, which includes emergency assistance; and supportive services, which includes allowance payments. The basic services and delivery of case-management activities are further described in §§ 685.340 through 685.390.

§ 685.340 What career services must grantees provide to eligible migrant and seasonal

farmworkers?

(a)) Grantees must provide the career services described in WIOA secs. 167(d) and 134(c)(2), and 20 CFR part 680 to eligible MSFWs.

(b) Grantees must provide other services identified in the approved program plan.

(c)) Grantees must provide access to career services through the one-stop delivery system. Grantees can also provide career services through sources outside the one-stop system.

(d) The delivery of career services to eligible MSFWs by the grantee and through the one-stop system must be discussed in the required MOU between the Local Workforce Development Board and the grantee.

§ 685.350 What training services must grantees provide to eligible migrant and seasonal

farmworkers?

(a)) Grantees must provide the training activities described in WIOA secs. 167(d) and 134(c)(3)(D), and 20 CFR part 680 to eligible MSFWs. These activities include, but are not limited to, occupational-skills training and on-the-job training. Eligible MSFWs are not required to receive career services prior to receiving training services.

(b) Training services must be directly linked to an in-demand industry sector or occupation in the service area, or in another area to which an eligible MSFW receiving such services is willing to relocate.

(c) Training activities must encourage the attainment of recognized post-secondary credentials as defined in § 685.110 when appropriate for an eligible MSFW.

§ 685.360 What housing services must grantees provide to eligible migrant and seasonal

farmworkers?

(a) Housing grantees must provide housing services to eligible MSFWs.

(b) Career services and training grantees may provide housing services to eligible MSFWs as described in their program plan.

(c) Housing services include the following:

(1) Permanent housing that is owner-occupied, or occupied on a permanent, year-round basis (notwithstanding ownership) as the eligible MSFW's primary residence to which he/she returns at the end of the work or training day; and

(2) Temporary housing that is not owner-occupied and is used by MSFWs whose employment requires occasional travel outside their normal commuting area.

(d) Permanent housing services include but are not limited to: investments in development services, project management, and resource development to secure acquisition, construction/ renovation and operating funds, property management services, and program management. New construction, purchase of existing structures, and rehabilitation of existing structures, as well as the infrastructure, utilities, and other improvements necessary to complete or maintain those structures may also be considered part of managing permanent housing.

(e) Temporary housing services include but not limited to: housing units intended for temporary occupancy located in permanent structures, such as rental units in an apartment complex or in mobile structures, tents, and yurts that provide short-term, seasonal housing opportunities; temporary structures that may be moved from site to site, dismantled and re- erected when needed for farmworker occupancy, closed during the off-season, or handled through other similar arrangements; and off-farm housing operated independently of employer interest in, or control of,

the housing, or on-farm housing operated by a nonprofit, including faith-based or community non-profit organizations, but located on property owned by an agricultural employer. Managing temporary housing may involve property management of temporary housing facilities, case management, and referral services, and emergency housing payments, including vouchers and cash payments for rent/lease and utilities.

(f) Housing services may only be provided when the services are required to meet the needs of eligible MSFWs to occupy a unit of housing for reasons related to seeking or retaining employment, or engaging in training.

§ 685.370 What services may grantees provide to eligible migrant and seasonal farmworkers youth participants aged 14-24?

(a) Based on an evaluation and assessment of the needs of eligible MSFW youth, grantees may provide activities and services that include but are not limited to:

(1) Career services and training as described in §§ 685.340 and 685.350;

(2) Youth workforce investment activities specified in WIOA sec. 129;

(3) Life skills activities which may include self- and interpersonal skills development;

(4) Community service projects;

(b) Other activities and services that conform to the use of funds for youth activities described in 20 CFR part 681.

(c)) Grantees may provide these services to any eligible MSFW youth, regardless of the participant's eligibility for WIOA title I youth activities as described in WIOA sec. 129(a).

§ 685.380 What related assistance services may be provided to eligible migrant and

seasonal farmworkers?

Related assistance may include short-term direct services and activities. Examples include emergency assistance, as defined in § 685.110, and those activities identified in WIOA sec. 167(d), such as: English language and literacy instruction; pesticide and worker safety training; housing (including permanent housing), as described in § 685.360 and as provided in the approved program plan; and school dropout prevention and recovery activities. Related assistance may be provided to eligible MSFWs not enrolled in career services, youth services, or training services.

§ 685.390 When may eligible migrant and seasonal farmworkers receive related

assistance?

Eligible MSFWs may receive related assistance services when the grantee identifies and documents the need for the related assistance, which may include a statement by the eligible MSFW.

Subpart D—Performance Accountability, Planning, and Waiver Provisions

§ 685.400 What are the indicators of performance that apply to the National Farmworker Jobs Program?

(a) For grantees providing career services and training, the Department will use the indicators of performance common to the adult and youth programs, described in WIOA sec. 116(b)(2)(A).

(b) For grantees providing career services and training, the Department will reach agreement with individual grantees on the levels of performance for each of the primary indicators of performance, taking into account economic conditions, characteristics of the individuals served, and other appropriate factors, and using, to the extent practicable, the statistical adjustment model under WIOA sec. 116(b)(3)(A)(viii). Once agreement on the levels of performance for each of the primary indicators of performance is reached with individual grantees, the Department will incorporate the adjusted levels of performance in the grant plan.

(c) For grantees providing housing services only, grantees will use the total number of

eligible MSFWs served and the total number of eligible MSFW families served as indicators of performance.

(d) The Department may develop additional performance indicators with appropriate levels of performance for evaluating programs that serve eligible MSFWs and which reflect the State service area economy, local demographics of eligible MSFWs, and other appropriate factors. If additional performance indicators are developed, the levels of performance for these additional indicators must be negotiated with the grantee and included in the approved program plan.

(e)) Grantees may develop additional performance indicators and include them in the program plan or in periodic performance reports.

§ 685.410 What planning documents must a grantee submit?

Each grantee receiving WIOA sec. 167 program funds must submit to the Department a comprehensive program plan and a projection of participant services and expenditures in accordance with instructions issued by the Secretary.

§ 685.420 What information is required in the grantee program plan?

A grantee's 4-year program plan must describe:

(a) The service area that the applicant proposes to serve;

(b) The population to be served and the education and employment needs of the MSFW population to be served;

(c) The manner in which proposed services to eligible MSFWs will strengthen their ability to obtain or retain unsubsidized employment or stabilize their unsubsidized employment, including upgraded employment in agriculture;

(d) The related assistance and supportive services to be provided and the manner in which such assistance and services are to be integrated and coordinated with other appropriate services;

(e) The performance accountability measures that will be used to assess the performance of the entity in carrying out the NFJP program activities, including the expected levels of performance for the primary indicators of performance described in § 685.400;

(f) The availability and accessibility of local resources, such as supportive services, services provided through one-stop delivery systems, and education and training services, and how the resources can be made available to the population to be served;

(g) The plan for providing services including strategies and systems for outreach, career planning, assessment, and delivery through one-stop delivery systems;

(h) The methods the grantee will use to target its services on specific segments of the eligible population, as appropriate; and

(i) Such other information as required by the Secretary in instructions issued under § 685.410.

§ 685.430 Under what circumstances are the terms of the grantee's program plan modified

by the grantee or the Department?

(a)) Plans must be modified to reflect the funding level for each year of the grant. The Department will provide instructions annually on when to submit modifications for each year of funding, which will generally be no later than June 1 prior to the start of the subsequent year of the grant cycle.

(b) The grantee must submit a request to the Department for any proposed modifications to its plan to add, delete, expand, or reduce any part of the program plan or allowable activities. The Department will consider the cost principles, uniform administrative requirements, and terms and conditions of award when reviewing modifications to program plans.

(c) If the grantee is approved for a regulatory waiver under §§ 685.460 and 685.470, the grantee must submit a modification of its grant plan to reflect the effect of the waiver.

§ 685.440 How are costs classified under the National Farmworker Jobs Program?

(a)) Costs are classified as follows:

(1) Administrative costs, as defined in 20 CFR 683.215; and

(2) Program costs, which are all other costs not defined as administrative.

(b) Program costs must be classified and reported in the following categories:

(1) Related assistance (including emergency assistance);

(2) Supportive services; and

(3) All other program services.

§ 685.450 What is the Workforce Innovation and Opportunity Act administrative cost

limit for National Farmworker Jobs Program grants?

Under 20 CFR 683.205(b), limits on administrative costs for programs operated under subtitle D of WIOA title I will be identified in the grant or contract award document.

Administrative costs will not exceed 15 percent of total grantee funding.

§ 685.460 Are there regulatory and/or statutory waiver provisions that apply to the

Workforce Innovation and Opportunity Act?

(a) The statutory waiver provision at WIOA sec. 189(i) and discussed in 20 CFR 679.600 does not apply to any NFJP grant under WIOA sec. 167.

(b) Grantees may request waiver of any regulatory provisions only when such regulatory provisions are:

(1) Not required by WIOA;

(2) Not related to wage and labor standards, non-displacement protection, worker rights, participation and protection of workers and participants, and eligibility of participants, grievance procedures, judicial review, nondiscrimination, allocation of funds, procedures for review and approval of plans; and

(3) Not related to the basic purposes of WIOA, described in 20 CFR 675.100.

§ 685.470 How can grantees request a waiver?

To request a waiver, a grantee must submit to the Department a waiver plan that:

(a)) Describes the goals of the waiver, the expected programmatic outcomes, and how the waiver will improve the provision of program activities;

(b) Is consistent with any guidelines the Department establishes;

(c)) Describes the data that will be collected to track the impact of the waiver; and

(d) Includes a modified program plan reflecting the effect of the requested waiver.

Subpart E—Supplemental Youth Workforce Investment Activity Funding Under the Workforce Innovation and Opportunity Act

§ 685.500 What is supplemental youth workforce investment activity funding?

Pursuant to WIOA sec. 127(a)(1), if Congress appropriates more than $925 million for WIOA youth workforce investment activities in a fiscal year, 4 percent of the excess amount must be used to provide workforce investment activities for eligible MSFW youth under WIOA sec. 167.

§ 685.510 What requirements apply to grants funded by the Workforce Innovation and

Opportunity Act?

The requirements in subparts A through D of this regulation apply to grants funded by WIOA sec. 127(a)(1), except that grants described in this subpart must be used only for workforce investment activities for eligible MSFW youth, as described in § 685.370 and WIOA sec. 167(d) (including related assistance and supportive services).

§ 685.520 What is the application process for obtaining a grant funded by the Workforce

Innovation and Opportunity Act?

The Department will issue a separate FOA for grants funded by WIOA sec. 127(a)(1).

The selection will be made in accordance with the procedures described in § 685.210, except that the Department reserves the right to provide priority to applicants that are WIOA sec. 167 grantees.

§ 685.530 What planning documents are required for grants funded by the Workforce

Innovation and Opportunity Act?

The required planning documents will be described in the FOA.

§ 685.540 How are funds allocated to grants funded by the Workforce Innovation and

Opportunity Act?

The allocation of funds will be based on the comparative merits of the applications, in accordance with criteria set forth in the FOA.

§ 685.550 Who is eligible to receive services through grants funded by the Workforce

Innovation and Opportunity Act?

Eligible MSFW youth as defined in § 685.110 are eligible to receive services through grants funded by WIOA sec. 127(a)(1).

13. Add part 686 to read as follows:

PART 686 – THE JOB CORPS UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

Subpart A—Scope and Purpose

Sec.

686.100 What is the scope of this part?

686.110 What is the Job Corps program?

686.120 What definitions apply to this part?

686.130 What is the role of the Job Corps Director?

Subpart B—Site Selection and Protection and Maintenance of Facilities

Sec.

686.200 How are Job Corps center locations and sizes determined?

686.210 How are center facility improvements and new construction handled?

686.220 Who is responsible for the protection and maintenance of center facilities?

Subpart C—Funding and Selection of Center Operators and Service Providers

Sec.

686.300 What entities are eligible to receive funds to operate centers and provide training and operational support services?

686.310 How are entities selected to receive funding to operate centers?

686.320 What if a current center operator is deemed to be an operator of a high-performing center?

686.330 What is the length of an agreement entered into by the Secretary for operation of a Job Corps center and what are the conditions for renewal of such an agreement?

686.340 How are entities selected to receive funding to provide outreach and admission, career transition and other operations support services?

686.350 What conditions apply to the operation of a Civilian Conservation Center?

686.360 What are the requirements for award of contracts and payments to Federal agencies?

Subpart D—Recruitment, Eligibility, Screening, Selection and Assignment, and Enrollment

Sec.

686.400 Who is eligible to participate in the Job Corps program?

686.410 Are there additional factors which are considered in selecting an eligible applicant for enrollment?

686.420 Are there any special requirements for enrollment related to the Military Selective Service Act?

686.430 What entities conduct outreach and admissions activities for the Job Corps program?

686.440 What are the responsibilities of outreach and admissions providers?

686.450 How are applicants who meet eligibility and selection criteria assigned to centers?

686.460 What restrictions are there on the assignment of eligible applicants for nonresidential enrollment in Job Corps?

686.470 May an individual who is determined to be ineligible or an individual who is denied enrollment appeal that decision?

686.480 At what point is an applicant considered to be enrolled in Job Corps?

686.490 How long may a student be enrolled in Job Corps?

Subpart E—Program Activities and Center Operations

Sec.

686.500 What services must Job Corps centers provide?

686.505 What types of training must Job Corps centers provide?

686.510 Are entities other than Job Corps center operators permitted to provide academic and career technical training?

686.515 What are advanced career training programs?

686.520 What responsibilities do the center operators have in managing work-based learning?

686.525 Are students permitted to hold jobs other than work-based learning opportunities?

686.530 What residential support services must Job Corps center operators provide?

686.535 Are Job Corps centers required to maintain a student accountability system?

686.540 Are Job Corps centers required to establish behavior management systems?

686.545 What is Job Corps' zero tolerance policy?

686.550 How does Job Corps ensure that students receive due process in disciplinary actions?

686.555 What responsibilities do Job Corps centers have in assisting students with child care needs?

686.560 What are the center's responsibilities in ensuring that students' religious rights are respected?

686.565 Is Job Corps authorized to conduct pilot and demonstration projects?

Subpart F—Student Support

Sec.

686.600 Are students provided with government-paid transportation to and from Job Corps centers?

686.610 When are students authorized to take leaves of absence from their Job Corps centers?

686.620 Are Job Corps students eligible to receive cash allowances and performance bonuses?

686.630 Are student allowances subject to Federal payroll taxes?

686.640 Are students provided with clothing?

Subpart G—Career Transition and Graduate Services

Sec.

686.700 What are a Job Corps center's responsibilities in preparing students for career transition services?

686.710 What career transition services are provided for Job Corps enrollees?

686.720 Who provides career transition services?

686.730 What are the responsibilities of career transition service providers?

686.740 What services are provided for program graduates?

686.750 Are graduates provided with transition allowances?

686.760 What services are provided to former enrollees?

Subpart H—Community Connections

Sec.

686.800 How do Job Corps centers and service providers become involved in their local communities?

686.810 What is the makeup of a workforce council and what are its responsibilities?

686.820 How will Job Corps coordinate with other agencies?

Subpart I—Administrative and Management Provisions

Sec.

686.900 Are damages caused by the acts or omissions of students eligible for payment under the Federal Tort Claims Act?

686.905 Are loss and damages that occur to persons or personal property of students at Job Corps centers eligible for reimbursement?

686.910 If a student is injured in the performance of duty as a Job Corps student, what benefits may the student receive?

686.915 When is a Job Corps student considered to be in the performance of duty?

686.920 How are students protected from unsafe or unhealthy situations?

686.925 What are the requirements for criminal law enforcement jurisdiction on center property?

686.930 Are Job Corps operators and service providers authorized to pay State or local taxes on gross receipts?

686.935 What are the financial management responsibilities of Job Corps center operators and other service providers?

686.940 Are center operators and service providers subject to Federal audits?

686.945 What are the procedures for management of student records?

686.950 What procedures apply to disclosure of information about Job Corps students and program activities?

686.955 What are the reporting requirements for center operators and operational support service providers?

686.960 What procedures are available to resolve complaints and disputes?

686.965 How does Job Corps ensure that complaints or disputes are resolved in a timely fashion?

686.970 How does Job Corps ensure that centers or other service providers comply with the Act and the Workforce Innovation and Opportunity Act regulations?

686.975 How does Job Corps ensure that contract disputes will be resolved?

686.980 How does Job Corps resolve disputes between the U.S. Department of Labor and the U.S. Department of Agriculture regarding the operation of Job Corps centers?

686.985 What Department of Labor equal opportunity and nondiscrimination regulations apply to Job Corps?

Subpart J—Performance

Sec.

686.1000 How is the performance of the Job Corps program assessed?

686.1010 What are the primary indicators of performance for Job Corps centers and the Job Corps program?

686.1020 What are the indicators of performance for Job Corps outreach and admissions providers?

686.1030 What are the indicators of performance for Job Corps career transition service providers?

686.1040 What information will be collected for use in the Annual Report?

686.1050 How are the expected levels of performance for Job Corps centers, outreach and admissions providers and career transition service providers established?

686.1060 How are center rankings established?

686.1070 How and when will the Secretary use Performance Improvement Plans?

Authority: Secs. 142, 144, 146, 147, 159, 189, 503, Pub. L. 113-128, 128 Stat. 1425 (Jul. 22, 2014).

Subpart A—Scope and Purpose

§ 686.100 What is the scope of this part?

The regulations in this part outline the requirements that apply to the Job Corps program.

More detailed policies and procedures are contained in a Policy and Requirements Handbook issued by the Secretary. Throughout this part, "instructions (procedures) issued by the Secretary" and similar references refer to the Policy and Requirements Handbook and other Job Corps directives.

§ 686.110 What is the Job Corps program?

Job Corps is a national program that operates in partnership with States and communities, Local Workforce Development Boards, Youth Standing Committees where established, one-stop centers and partners, and other youth programs to provide academic, career and technical education, service-learning, and social opportunities primarily in a residential setting, for low- income young

people. The objective of Job Corps is to support responsible citizenship and provide young people with the skills they need to lead to successful careers that will result in

economic self-sufficiency and opportunities for advancement in in-demand industry sectors or occupations or the Armed Forces, or to enrollment in post-secondary education.

§ 686.120 What definitions apply to this part?

The following definitions apply to this part:

Absent Without Official Leave (AWOL) means an adverse enrollment status to which a

student is assigned based on extended, unapproved absence from his/her assigned center or off-center place of duty. Students do not earn Job Corps allowances while in AWOL status.

Applicable Local Board means a Local Workforce Development Board that:

(1) Works with a Job Corps center and provides information on local employment opportunities and the job skills and credentials needed to obtain the opportunities; and

(2) Serves communities in which the graduates of the Job Corps seek employment.

Applicable one-stop center means a one-stop center that provides career transition

services, such as referral, assessment, recruitment, and placement, to support the purposes of the Job Corps.

Capital improvement means any modification, addition, restoration or other improvement:

(1) Which increases the usefulness, productivity, or serviceable life of an existing site, facility, building, structure, or major item of equipment;

(2) Which is classified for accounting purposes as a "fixed asset;" and

(3) The cost of which increases the recorded value of the existing building, site, facility, structure, or major item of equipment and is subject to depreciation.

Career technical training means career and technical education and training.

Career transition service provider means an organization acting under a contract or other agreement with Job Corps to provide career transition services for graduates and, to the extent possible, for former students.

Civilian Conservation Center (CCC) means a center operated on public land under an agreement between the Department of Labor (DOL or the Department) and the Department of Agriculture, which provides, in addition to other training and assistance, programs of work-based

learning to conserve, develop, or manage public natural resources or public recreational areas or to develop community projects in the public interest.

Contract center means a Job Corps center operated under a contract with the Department.

Contracting officer means an official authorized to enter into contracts or agreements on behalf of the Department.

Enrollee means an individual who has voluntarily applied for, been selected for, and enrolled in the Job Corps program, and remains with the program, but has not yet become a graduate. Enrollees are also referred to as "students" in this part.

Enrollment means the process by which an individual formally becomes a student in the Job Corps program.

Former enrollee means an individual who has voluntarily applied for, been selected for, and enrolled in the Job Corps program, but left the program prior to becoming a graduate.

Graduate means an individual who has voluntarily applied for, been selected for, and enrolled in the Job Corps program and who, as a result of participation in the program, has received a secondary school diploma or recognized equivalent, or has completed the requirements of a career technical training program that prepares individuals for employment leading to economic self-sufficiency or entrance into post-secondary education or training.

Individual with a disability means an individual with a disability as defined in sec. 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102).

Interagency agreement means a formal agreement between the Department and another Federal agency administering and operating centers. The agreement establishes procedures for the funding, administration, operation, and review of those centers as well as the resolution of any disputes.

Job Corps means the Job Corps program established within the Department of Labor and described in sec. 143 of the Workforce Innovation and Opportunity Act (WIOA).

Job Corps center means a facility and an organizational entity, including all of its parts, providing Job Corps training and designated as a Job Corps center, as described in sec. 147 of WIOA.

Job Corps Director means the chief official of the Job Corps or a person authorized to act for the Job Corps Director.

Low-income individual means an individual who meets the definition in WIOA sec. 3(36).

National Office means the national office of Job Corps.

National training contractor means a labor union, union-affiliated organization, business organization, association or a combination of such organizations, which has a contract with the national office to provide career technical training, career transition services, or other services.

Operational support services means activities or services required to support the operation of Job Corps, including:

(1) Outreach and admissions services;

(2) Contracted career technical training and off-center training;

(3) Career transition services;

(4) Continued services for graduates;

(5) Certain health services; and

(6) Miscellaneous logistical and technical support.

Operator means a Federal, State or local agency, or a contractor selected under this subtitle to operate a Job Corps center under an agreement or contract with the Department.

Outreach and admissions provider means an organization that performs recruitment services, including outreach activities, and screens and enrolls youth under a contract or other agreement with Job Corps.

Participant, as used in this part, includes both graduates and enrollees and former enrollees that have completed their career preparation period. It also includes all enrollees and former enrollees who have remained in the program for at least 60 days.

Placement means student employment, entry into the Armed Forces, or enrollment in other training or education programs following separation from Job Corps.

Regional appeal board means the board designated by the Regional Director to consider student appeals of disciplinary discharges.

Regional Director means the chief Job Corps official of a regional office or a person authorized to act for the Regional Director.

Regional Office means a regional office of Job Corps.

Regional Solicitor means the chief official of a regional office of the DOL Office of the Solicitor, or a person authorized to act for the Regional Solicitor.

Separation means the action by which an individual ceases to be a student in the Job Corps program, either voluntarily or involuntarily.

Service Provider means an entity selected under this subtitle to provide operational supportservices described in this subtitle to a Job Corps center. Student means an individual enrolled in the Job Corps.

Unauthorized goods means:

(1) Firearms and ammunition;

(2) Explosives and incendiaries;

(3) Knives with blades longer than 2 inches;

(4) Homemade weapons;

(5) All other weapons and instruments used primarily to inflict personal injury;

(6) Stolen property;

(7) Drugs, including alcohol, marijuana, depressants, stimulants, hallucinogens, tranquilizers, and drug paraphernalia except for drugs and/or paraphernalia that are prescribed for medical reasons; and

(8) Any other goods prohibited by the Secretary, Center Director, or center operator in a student handbook.

§ 686.130 What is the role of the Job Corps Director?

The Job Corps Director has been delegated the authority to carry out the responsibilities of the Secretary under title I, subtitle C of WIOA. Where the term "Secretary" is used in this part to refer to establishment or issuance of guidelines and standards directly relating to the operation of the Job Corps program, the Job Corps Director has that responsibility.

Subpart B—Site Selection and Protection and Maintenance of Facilities

§ 686.200 How are Job Corps center locations and sizes determined?

(a) The Secretary must approve the location and size of all Job Corps centers based on established criteria and procedures.

(b) The Secretary establishes procedures for making decisions concerning the establishment, relocation, expansion, or closing of contract centers.

§ 686.210 How are center facility improvements and new construction handled?

The Secretary establishes procedures for requesting, approving, and initiating capital improvements and new construction on Job Corps centers.

§ 686.220 Who is responsible for the protection and maintenance of center facilities?

(a) The Secretary establishes procedures for the protection and maintenance of contract center facilities owned or leased by the Department of Labor, that are consistent with the current Federal Property Management Regulations.

(b) The U.S. Department of Agriculture, when operating Civilian Conservation Centers (CCC) on public land, is responsible for the protection and maintenance of CCC facilities.

(c) The Secretary issues procedures for conducting periodic facility surveys of centers to determine their condition and to identify needs such as correction of safety and health deficiencies, rehabilitation, and/or new construction.

Subpart C—Funding and Selection of Center Operators and Service Providers

§ 686.300 What entities are eligible to receive funds to operate centers and provide training and operational support services?

(a) Center Operators. Entities eligible to receive funds under this subpart to operate centers include:

(1) Federal, State, and local agencies;

(2) Private organizations, including for-profit and non-profit corporations;

(3) Indian tribes and organizations; and

(4) Area career and technical education or residential career and technical schools (WIOA sec. 147(a)(1)(A)).

(b) Service Providers. Entities eligible to receive funds to provide outreach and admissions, career transition services and other operational support services are local or other entities with the necessary capacity to provide activities described in this part to a Job Corps center, including:

(1) Applicable one-stop centers and partners;

(2) Organizations that have a demonstrated record of effectiveness in serving at-risk youth and placing them into employment, including community action agencies; business organizations, including private for-profit and non-profit corporations; and labor organizations; and

(3) Child welfare agencies that are responsible for children and youth eligible for benefits and services under sec. 477 of the Social Security Act (42 U.S.C. 677).

§ 686.310 How are entities selected to receive funding to operate centers?

(a) The Secretary selects eligible entities to operate contract centers on a competitive basis

in accordance with applicable statutes and regulations. In selecting an entity, ETA issues requests for proposals (RFPs) for the operation of all contract centers according to the Federal Acquisition Regulation (48 CFR chapter 1) and DOL Acquisition Regulation (48 CFR chapter 29). ETA develops RFPs for center operators in consultation with the Governor, the center workforce council (if established), and the Local Board for the workforce investment area in

which the center is located (WIOA sec. 147(b)(1)(A)).

(b) The RFP for each contract center describes uniform specifications and standards, as well as specifications and requirements that are unique to the operation of the specific center.

(c) The Contracting Officer selects and funds Job Corps contract center operators on the basis of an evaluation of the proposals received using criteria established by the Secretary, and set forth in the RFP. The criteria include the following:

(1) The offeror's ability to coordinate the activities carried out through the Job Corps center with activities carried out under the appropriate State and local workforce investment plans;

(2) The offeror’s ability to offer career technical training that has been proposed by the workforce council and the degree to which the training reflects employment opportunities in the local areas in which most of the enrollees intend to seek employment;

(3) The degree to which the offeror demonstrates relationships with the surrounding communities, including employers, labor organizations, State Boards, Local Boards, applicable one-stop centers, and the State and region in which the center is located; and

(4) The offeror's past performance, if any, relating to operating or providing activities to a Job Corps center, including information regarding the offeror in any reports developed by the Office

of the Inspector General of the Department of Labor and the offeror's demonstrated effectiveness in assisting individuals in achieving the indicators of performance for eligible youth described in sec. 116(b)(2)(A)(ii) of WIOA, listed in § 686.1010.

(5) The offeror's ability to demonstrate a record of successfully assisting at-risk youth to connect to the workforce, including providing them with intensive academics and career technical training.

(d) In order to be eligible to operate a Job Corps center, the offeror must also submit the following information at such time and in such manner as required by the Secretary:

(1) A description of the program activities that will be offered at the center and how the academics and career technical training reflect State and local employment opportunities, including opportunities in in-demand industry sectors and occupations recommended by the workforce council;

(2) A description of the counseling, career transition, and support activities that will be offered at the center, including a description of the strategies and procedures the offeror will use to place graduates into unsubsidized employment or education leading to a recognized post- secondary credential upon completion of the program;

(3) A description of the offeror's demonstrated record of effectiveness in placing at-risk youth into employment and post-secondary education, including past performance of operating a Job Corps center and as appropriate, the entity's demonstrated effectiveness in assisting individuals in achieving the indicators of performance for eligible youth described in sec. 116(b)(2)(A)(ii) of WIOA, listed in § 686.1010;

(4) A description of the relationships that the offeror has developed with State Boards,

Local Boards, applicable one-stop centers, employers, labor organizations, State and local educational agencies, and the surrounding communities in which the center is located;

(5) A description of the offeror's ability to coordinate the activities carried out through the Job Corps center with activities carried out under the appropriate State Plan and local plans;

(6) A description of the strong fiscal controls the offeror has in place to ensure proper accounting of Federal funds and compliance with the Financial Management Information System established by the Secretary under sec. 159(a) of WIOA;

(7) A description of the steps to be taken to control costs in accordance with the Financial Management Information System established by the Secretary (WIOA sec. 159(a)(3));

(8) A detailed budget of the activities that will be supported using Federal funds provided under this part and non-Federal resources;

(9) An assurance the offeror is licensed to operate in the State in which the center is located;

(10) An assurance that the offeror will comply with basic health and safety codes, including required disciplinary measures and Job Corps' Zero Tolerance Policy (WIOA sec. 152(b)); and

(11) Any other information on additional selection factors required by the Secretary.

§ 686.320 What if a current center operator is deemed to be an operator of a high-

performing center?

(a) If an offeror meets the requirements as an operator of a high-performing center as applied to a particular Job Corps center, that operator will be allowed to compete in any competitive selection process carried out for an award to operate that center (WIOA sec. 147(b)(1)).

(b) An offeror is considered to be an operator of a high-performing center if the Job Corps center operated by the offeror:

(1) Is ranked among the top 20 percent of Job Corps centers for the most recent preceding program year according to the rankings calculated under § 686.1060; and

(2) Meets the expected levels of performance established under § 686.1050 with respect to each of the primary indicators of performance for Job Corps centers:

(i) For the period of the most recent preceding 3 program years for which information is available at the time the determination is made, achieved an average of 100 percent, or higher, of the expected level of performance for the indicator; and

(ii) For the most recent preceding program year for which information is available at the time the determination is made, achieved 100 percent, or higher, of the expected level of performance established for the indicator.

(c) If any of the program years described in paragraphs (b)(2)(i) and (ii) of this section precedes the implementation of the establishment of the expected levels of performance under § 686.1050 and the application of the primary indicators of performance for Job Corps centers identified in § 686.1010, an entity is considered an operator of a high-performing center during that period if the Job Corps center operated by the entity:

(1) Meets the requirements of paragraph (b)(2) of this section with respect to such preceding program years using the performance of the Job Corps center regarding the national goals or targets established by the Office of the Job Corps under the previous performance accountability system for –

(i) The 6-month follow-up placement rate of graduates in employment, the military, education or training;

(ii) The 12-month follow-up placement rate of graduates in employment, the military, education, or training;

(iii) The 6-month follow-up average weekly earnings of graduates;

(iv) The rate of attainment of secondary school diplomas or their recognized equivalent;

(v) The rate of attainment of completion certificates for career technical training;

(vi) Average literacy gains; and

(vii) Average numeracy gains; or

(2) Is ranked among the top five percent of Job Corps centers for the most recent preceding program year according to the rankings calculated under § 686.1060.

§ 686.330 What is the length of an agreement entered into by the Secretary for operation

of a Job Corps center and what are the conditions for renewal of such an agreement?

(a)) Agreements are for not more than a 2-year period. The Secretary may exercise any contractual option to renew the agreement in 1-year increments for not more than 3 additional years.

(b) The Secretary will establish procedures for evaluating the option to renew an agreement that includes: an assessment of the factors described in paragraph (c) of this section; a review of contract performance and financial reporting compliance; a review of the program management and performance data described in §§ 686.1000 and 686.1010; an assessment of whether the center is on a performance improvement plan as described § 686.1070 and if so, whether the center is making measureable progress in completing the actions described in the plan; and an evaluation of the factors described in paragraph (d) of this section.

(c) The Secretary will only renew the agreement of an entity to operate a Job Corps center if the entity:

(1) Has a satisfactory record of integrity and business ethics;

(2) Has adequate financial resources to perform the agreement;

(3) Has the necessary organization, experience, accounting and operational controls, and technical skills; and

(4) Is otherwise qualified and eligible under applicable laws and regulations, including

that the contractor is not under suspension or debarred from eligibility for Federal contractors.

(d) The Secretary will not renew an agreement for an entity to operate a Job Corps center for any additional 1-year period if, for both of the 2 most recent preceding program years for which information is available at the time the determination is made, or if a second program year is not available, the preceding year for which information is available, such center:

(1) Has been ranked in the lowest 10 percent of Job Corps centers according to the rankings calculated under § 686.1060; and

(2) Failed to achieve an average of 50 percent or higher of the expected level of performance established under § 686.1050 with respect to each of the primary indicators of performance for eligible youth described in sec. 116(b)(2)(A)(ii) of WIOA, listed in § 686.1010.

(e) Information Availability:

(1) Information will be considered to be available for a program year for purposes of paragraph (d) of this section if for each of the primary indicators of performance, all of the students included in the cohort being measured either began their participation under the current center operator or, if they began their participation under the previous center operator, were on center for at least 6 months under the current operator.

(2) If complete information for any of the indicators of performance described in paragraph (d)(2) of this section is not available for either of the 2 program years described in paragraph (d) of this section, the Secretary will review partial program year data from the most recent program year for those indicators, if at least two quarters of data are available, when making the determination required under paragraph (d)(2) of this section.

(f) If any of the program years described in paragraph (d) of this section precede the implementation of the establishment of the expected levels of performance under § 686.1050 and the application of the primary indicators of performance for Job Corps centers described in § 686.1010, the evaluation described in paragraph (d) of this section will be based on whether in its operation of the center the entity:

(1) Meets the requirement of paragraph (d)(2) of this section with respect to such preceding program years using the performance of the Job Corps center regarding the national goals or targets established by the Office of the Job Corps under the previous performance accountability system for –

(i) The 6-month follow-up placement rate of graduates in employment, the military, education, or training;

(ii) The 12-month follow-up placement rate of graduates in employment, the military,

education, or training;

(iii) The 6-month follow-up average weekly earnings of graduates;

(iv) The rate of attainment of secondary school diplomas or their recognized equivalent;

(v) The rate of attainment of completion certificates for career technical training;

(vi) Average literacy gains; and

(vii) Average numeracy gains; or

(2) Is ranked among the lowest 10 percent of Job Corps centers for the most recent preceding program year according to the ranking calculated under § 686.1060.

(g) Exception – the Secretary can exercise an option to renew the agreement with an entity notwithstanding the requirements in paragraph (d) of this section for no more than 2 additional years if the Secretary determines that a renewal would be in the best interest of the Job Corps program, taking into account factors including:

(1) Significant improvements in program performance in carrying out a performance

improvement plan;

(2) That the performance is due to circumstances beyond the control of the entity, such as an emergency or disaster;

(3) A significant disruption in the operations of the center, including in the ability to continue to provide services to students, or significant increase in the cost of such operations; or

(4) A significant disruption in the procurement process with respect to carrying out a competition for the selection of a center operator.

(h) If the Secretary does make an exception and exercises the option to renew per paragraph (g) of this section, the Secretary will provide a detailed explanation of the rationale for exercising the option to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate.

§ 686.340 How are entities selected to receive funding to provide outreach and admission,

career transition and other operations support services?

(a) The Secretary selects eligible entities to provide outreach and admission, career transition, and operational services on a competitive basis in accordance with applicable statutes and regulations. In selecting an entity, ETA issues requests for proposals (RFP) for operational support services according to the Federal Acquisition Regulation (48 CFR chapter 1) and DOL Acquisition Regulation (48 CFR chapter 29). ETA develops RFPs for operational support services

in consultation with the Governor, the center workforce council (if established), and the Local Board for the workforce investment area in which the center is located (WIOA sec. 147(a)(1)(A)).

(b) The RFP for each support service contract describes uniform specifications and standards, as well as specifications and requirements that are unique to the specific required operational support services.

(c) The Contracting Officer selects and funds operational support service contracts on the basis of an evaluation of the proposals received using criteria established by the Secretary and set forth in the RFP. The criteria may include the following, as applicable:

(1) The ability of the offeror to coordinate the activities carried out in relation to the Job Corps center with related activities carried out under the appropriate State Plan and local plans;

(2) The ability of the entity to offer career technical training that has been proposed by the workforce council and the degree to which the training reflects employment opportunities in the local areas in which most of the students intend to seek employment;

(3) The degree to which the offeror demonstrates relationships with the surrounding communities, including employers, labor organizations, State Boards, Local Boards, applicable one-stop centers, and the State and region in which the services are provided;

(4) The offeror's past performance, if any, relating to providing services to a Job Corps center, including information regarding the offeror in any reports developed by the Office of the Inspector General of the Department of Labor and the offeror's demonstrated effectiveness in assisting individuals in achieving the indicators of performance for eligible youth described in sec. 116(b)(2)(A)(ii) of WIOA, listed in § 686.1010;

(5) The offeror's ability to demonstrate a record of successfully assisting at-risk youth to connect to the workforce; and

(6) Any other information on additional selection factors required by the Secretary.

§ 686.350 What conditions apply to the operation of a Civilian Conservation Center?

(a) The Secretary of Labor may enter into an agreement with the Secretary of Agriculture to operate Job Corps centers located on public land, which are called Civilian Conservation Centers (CCCs). Located primarily in rural areas, in addition to academics, career technical training, and workforce preparation skills training, CCCs provide programs of work experience to conserve, develop, or manage public natural resources or public recreational areas or to develop community projects in the public interest.

(b) When the Secretary of Labor enters into an agreement with the Secretary of Agriculture for the funding, establishment, and operation of CCCs, provisions are included to ensure that the Department of Agriculture complies with the regulations under this part.

(c) Enrollees in CCCs may provide assistance in addressing national, State, and local disasters, consistent with current child labor laws. The Secretary of Agriculture must ensure that enrollees are properly trained, equipped, supervised, and dispatched consistent with the standards for the conservation and rehabilitation of wildlife established under the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.).

(d) The Secretary of Agriculture must designate a Job Corps National Liaison to support the agreement between the Departments of Labor and Agriculture to operate CCCs.

(e) The Secretary of Labor, in consultation with the Secretary of Agriculture, may select an entity to operate a CCC in accordance with the requirements of § 686.310 if the Secretary of Labor determines appropriate.

(f) The Secretary of Labor has the discretion to close CCCs if the Secretary determines appropriate.

§ 686.360 What are the requirements for award of contracts and payments to Federal

agencies?

(a) The requirements of the Federal Property and Administrative Services Act of 1949, as amended; the Federal Grant and Cooperative Agreement Act of 1977; the Federal Acquisition Regulation (48 CFR chapter 1); and the DOL Acquisition Regulation (48 CFR chapter 29) apply to the award of contracts and to payments to Federal agencies.

(b) Job Corps funding of Federal agencies that operate CCCs are made by a transfer of obligational authority from the Department to the respective operating agency.

Subpart D—Recruitment, Eligibility, Screening, Selection and Assignment, and Enrollment

§ 686.400 Who is eligible to participate in the Job Corps program?

(a) To be eligible to participate in the Job Corps, an individual must be:

(1) At least 16 and not more than 24 years of age at the time of enrollment, except that:

(i) The Job Corps Director may waive the maximum age limitation described in paragraph (a)(1) of this section, and the requirement in paragraph (a)(1)(ii) of this section for an individual with a disability if he or she is otherwise eligible according to the requirements listed in §§ 686.400 and 686.410; and

(ii) Not more than 20 percent of individuals enrolled nationwide may be individuals who are aged 22 to 24 years old;

(2) A low-income individual;

(3) An individual who is facing one or more of the following barriers to education and employment:

(i) Is basic skills deficient, as defined in WIOA sec. 3;

(ii) Is a school dropout;

(iii) Is homeless as defined in sec. 41403(6) of the Violence Against Women Act of 1994 (42 U.S.C. 14043e-2(6)); is a homeless child or youth, as defined in sec. 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)); or is a runaway, an individual in foster care; or an individual who was in foster care and has aged out of the foster care system.

(iv) Is a parent; or

(v) Requires additional education, career technical training, or workforce preparation skills in order to obtain and retain employment that leads to economic self-sufficiency; and

(4) Meets the requirements of § 686.420, if applicable.

(b) Notwithstanding paragraph (a)(2) of this section, a veteran is eligible to become an enrollee if the individual:

(1) Meets the requirements of paragraphs (a)(1) and (3) of this section; and

(2) Does not meet the requirement of paragraph (a)(2) of this section because the military income earned by the individual within the 6-month period prior to the individual's application for Job Corps prevents the individual from meeting that requirement.

§ 686.410 Are there additional factors which are considered in selecting an eligible

applicant for enrollment?

Yes, in accordance with procedures issued by the Secretary, an eligible applicant may be selected for enrollment only if:

(a)) A determination is made, based on information relating to the background, needs, and interests of the applicant, that the applicant's educational and career and technical needs can best be met through the Job Corps program;

(b) A determination is made that there is a reasonable expectation the applicant can participate successfully in group situations and activities, and is not likely to engage in actions that would potentially:

(1) Prevent other students from receiving the benefit of the program;

(2) Be incompatible with the maintenance of sound discipline; or

(3) Impede satisfactory relationships between the center to which the student is assigned and surrounding local communities.

(c) The applicant is made aware of the center's rules, what the consequences are for

failure to observe the rules, and agrees to comply with such rules, as described in procedures issued by the Secretary;

(d) The applicant has not been convicted of a felony consisting of murder, child abuse, or a crime involving rape or sexual assault (WIOA secs. 145(b)(1)(C), 145(b)(2), and 145(b)(3)). Other than these felony convictions, no one will be denied enrollment in Job Corps solely on the basis of contact with the criminal justice system. All applicants must submit to a background check conducted according to procedures established by the Secretary and in accordance with applicable State and local laws. If the background check finds that the applicant is on probation, parole, under a suspended sentence, or under the supervision of any agency as a result of court action or institutionalization, the court or appropriate supervising agency may certify in writing that it will approve of the applicant's participation in Job Corps, and provide full release from its supervision, and that the applicant's participation and release does not violate applicable laws

and regulations; and

(e)) Suitable arrangements are made for the care of any dependent children for the proposed period of enrollment.

§ 686.420 Are there any special requirements for enrollment related to the Military

Selective Service Act?

(a)) Yes, each male applicant 18 years of age or older must present evidence that he has complied with sec. 3 of the Military Selective Service Act (50 U.S.C. App. 451 et seq.) if

required; and

(b) When a male student turns 18 years of age, he must submit evidence to the center that he has complied with the requirements of the Military Selective Service Act (50 U.S.C. App. 451 et seq.).

§ 686.430 What entities conduct outreach and admissions activities for the Job Corps

program?

The Secretary makes arrangements with outreach and admissions providers to perform Job Corps recruitment, screening and admissions functions according to standards and procedures issued by the Secretary. Entities eligible to receive funds to provide outreach and admissions services are identified in § 686.300.

§ 686.440 What are the responsibilities of outreach and admissions providers?

(a) Outreach and admissions agencies are responsible for:

(1) Developing outreach and referral sources;

(2) Actively seeking out potential applicants;

(3) Conducting personal interviews with all applicants to identify their needs and eligibility status; and

(4) Identifying youth who are interested and likely Job Corps participants.

(b) Outreach and admissions providers are responsible for completing all Job Corps application forms and determining whether applicants meet the eligibility and selection criteria for participation in Job Corps as provided in §§ 686.400 and 686.410.

(c) The Secretary may decide that determinations with regard to one or more of the eligibility criteria will be made by the National Director or his or her designee.

§ 686.450 How are applicants who meet eligibility and selection criteria assigned to

centers?

(a) Each applicant who meets the application and selection requirements of §§ 686.400 and 686.410 is assigned to a center based on an assignment plan developed by the Secretary in consultation with the operators of Job Corps centers. The assignment plan identifies a target for the maximum percentage of students at each center who come from the State or region nearest the center, and the regions surrounding the center. The assignment plan is based on an analysis of:

(1) The number of eligible individuals in the State and region where the center is located and the regions surrounding where the center is located;

(2) The demand for enrollment in Job Corps in the State and region where the center is located and in surrounding regions;

(3) The size and enrollment level of the center, including the education, training, and supportive services provided through the center; and

(4) The performance of the Job Corps center relating to the expected levels of performance for indicators described in WIOA sec. 159(c)(1), and whether any actions have been taken with respect to the center under secs. 159(f)(2) and 159(f)(3) of WIOA.

(b) Eligible applicants are assigned to the center that offers the type of career technical training selected by the individual, and among the centers that offer such career technical training, is closest to the home of the individual. The Secretary may waive this requirement if:

(1) The enrollee would be unduly delayed in participating in the Job Corps program because the closest center is operating at full capacity; or

(2) The parent or guardian of the enrollee requests assignment of the enrollee to another Job Corps center due to circumstances in the community that would impair prospects for successful completion by the enrollee.

(c) If a parent or guardian objects to the assignment of a student under the age of 18 to a center other than the center closest to home that offers the desired career technical training, the Secretary must not make such an assignment.

§ 686.460 What restrictions are there on the assignment of eligible applicants for

nonresidential enrollment in Job Corps?

No more than 20 percent of students enrolled in Job Corps nationwide may be nonresidential students.

§ 686.470 May an individual who is determined to be ineligible or an individual who is

denied enrollment appeal that decision?

(a)) A person who is determined to be ineligible to participate in Job Corps under §

686.400 or a person who is not selected for enrollment under § 686.410 may appeal the determination to the outreach and admissions agency within 60 days of the determination. The appeal will be resolved according to the procedures in §§ 686.960 and 686.965. If the appeal is denied by the outreach/admissions contractor or the center, the person may appeal the decision in

writing to the Regional Director within 60 days of the date of the denial. The Regional Director

will decide within 60 days whether to reverse or approve the appealed decision. The decision by the Regional Director is the Department's final decision.

(b) If an applicant believes that he or she has been determined ineligible or not selected for enrollment based upon a factor prohibited by sec. 188 of WIOA, the individual may proceed under

the applicable Department nondiscrimination regulations implementing WIOA sec. 188 at 29 CFR part 37.

(c) An applicant who is determined to be ineligible or a person who is denied enrollment must be referred to the appropriate one-stop center or other local service provider.

§ 686.480 At what point is an applicant considered to be enrolled in Job Corps?

(a) To be considered enrolled as a Job Corps student, an applicant selected for enrollment must physically arrive at the assigned Job Corps center on the appointed date. However, applicants selected for enrollment who arrive at their assigned centers by government furnished transportation are considered to be enrolled on their dates of departure by such transportation.

(b) Center operators must document the enrollment of new students according to procedures issued by the Secretary.

§ 686.490 How long may a student be enrolled in Job Corps?

(a) Except as provided in paragraph (b) of this section, a student may remain enrolled in Job Corps for no more than 2 years.

(b)(1) An extension of a student's enrollment may be authorized in special cases according to procedures issued by the Secretary;

(2) A student's enrollment in an advanced career training program may be extended in

order to complete the program for a period not to exceed 1 year;

(3) An extension of a student's enrollment may be authorized in the case of a student with a disability who would reasonably be expected to meet the standards for a Job Corps graduate if allowed to participate in the Job Corps for not more than 1 additional year; and

(4) An enrollment extension may be granted to a student who participates in national service, as authorized by a Civilian Conservation Center, for the amount of time equal to the period of national service.

Subpart E—Program Activities and Center Operations

§ 686.500 What services must Job Corps centers provide?

(a) Job Corps centers must provide an intensive, well-organized and fully supervised program including:

(1) Educational activities, including:

(i) Career technical training;

(ii) Academic instruction; and

(iii) Employability and independent learning and living skills development.

(2) Work-based learning and experience;

(3) Residential support services; and

(4) Other services as required by the Secretary.

(b) In addition, centers must provide students with access to the career services described in secs. 134(c)(2)(A)(i)-(xi) of WIOA.

§ 686.505 What types of training must Job Corps centers provide?

(a) Job Corps centers must provide students with a career technical training program that is:

(1) Aligned with industry-recognized standards and credentials and with program guidance; and

(2) Linked to employment opportunities in in-demand industry sectors and occupations both in the area in which the center is located and, if practicable, in the area the student plans to reside after graduation.

(b) Each center must provide education programs, including: an English language acquisition program, high school diploma or high school equivalency certification program, and academic skills training necessary for students to master skills in their chosen career technical training programs.

(c) Each center must provide programs for students to learn and practice employability and independent learning and living skills including: job search and career development, interpersonal relations, driver's education, study and critical thinking skills, financial literacy and other skills specified in program guidance.

(d) All Job Corps training programs must be based on industry and academic skills standards leading to recognized industry and academic credentials, applying evidence-based instructional approaches, and resulting in:

(1) Students' employment in unsubsidized, in-demand jobs with the potential for advancement opportunities;

(2) Enrollment in advanced education and training programs or apprenticeships, including registered apprenticeship; or

(3) Enlistment in the Armed Services.

(e)) Specific career technical training programs offered by individual centers must be approved by the Regional Director according to policies issued by the Secretary.

(f)) Center workforce councils described in § 670.810 must review appropriate labor market information, identify in-demand industry sectors and employment opportunities in local areas where students will look for employment, determine the skills and education necessary for those jobs, and as appropriate, recommend changes in the center's career technical training program to the Secretary.

(g) Each center must implement a system to evaluate and track the progress and achievements of each student at regular intervals.

(h) Each center must develop a training plan that must be available for review and approval by the appropriate Regional Director.

§ 686.510 Are entities other than Job Corps center operators permitted to provide

academic and career technical training?

(a) The Secretary may arrange for the career technical and academic education of Job Corps students through local public or private educational agencies, career and technical educational institutions or technical institutes, or other providers such as business, union or union-affiliated organizations as long as the entity can provide education and training substantially equivalent in cost and quality to that which the Secretary could provide through other means.

(b) Entities providing these services will be selected in accordance with the requirements of § 686.310.

§ 686.515 What are advanced career training programs?

(a) The Secretary may arrange for programs of advanced career training (ACT) for selected students, which may be provided through the eligible providers of training services identified in WIOA sec. 122 in which the students continue to participate in the Job Corps program for a period not to exceed 1 year in addition to the period of participation to which these students would otherwise be limited.

(b) Students participating in an ACT program are eligible to receive:

(1) All of the benefits provided to a residential Job corps student; or

(2) A monthly stipend equal to the average value of the benefits described in paragraph (b)(1) of this section.

(c) Any operator may enroll more students than otherwise authorized by the Secretary in an ACT program if, in accordance with standards developed by the Secretary, the operator demonstrates:

(1) Participants in such a program have achieved a satisfactory rate of training and placement in training-related jobs; and

(2) For the most recently preceding 2 program years, the operator has, on average, met or exceeded the expected levels of performance under WIOA sec. 159(c)(1) for each of the primary

indicators described in WIOA sec. 116(b)(2)(A)(ii), listed in § 686.1010.

§ 686.520 What responsibilities do the center operators have in managing work-based learning?

(a) The center operator must emphasize and implement work-based learning programs for students through center program activities, including career and technical skills training, and through arrangements with employers. Work-based learning must be under actual working conditions and must be designed to enhance the employability, responsibility, and confidence of the students. Work-based learning usually occurs in tandem with students' career technical training.

(b) The center operator must ensure that students are assigned only to workplaces that meet the safety standards described in § 670.920.

§ 686.525 Are students permitted to hold jobs other than work-based learning opportunities?

Yes, a center operator may authorize a student to participate in gainful leisure time employment, as long as the employment does not interfere with required scheduled activities.

§ 686.530 What residential support services must Job Corps center operators provide?

Job Corps center operators must provide the following services according to procedures issued by the Secretary:

(a)) A center-wide quality living and learning environment that supports the overall training program and includes a safe, secure, clean and attractive physical and social environment, 7 days a week, 24 hours a day;

(b) An ongoing, structured personal counseling program for students provided by qualified staff;

(c)) A quality, safe and clean food service, to provide nutritious meals for students;

(d) Medical services, through provision or coordination of a wellness program which includes access to basic medical, dental and mental health services, as described in the Policy and Requirements Handbook, for all students from the date of enrollment until separation from the Job Corps program;

(e)) A recreation/avocational program that meets the needs of all students;

(f)) A student leadership program and an elected student government; and

(g) A student welfare association for the benefit of all students that is funded by non-

appropriated funds that come from sources such as snack bars, vending machines, disciplinary fines, and donations, and is run by an elected student government, with the help of a staff advisor.

§ 686.535 Are Job Corps centers required to maintain a student accountability system?

Yes, each Job Corps center must establish and implement an effective system to account for and document the daily whereabouts, participation, and status of students during their Job Corps enrollment. The system must enable center staff to detect and respond to instances of unauthorized or unexplained student absence. Each center must operate its student accountability system according to requirements and procedures issued by the Secretary.

§ 686.540 Are Job Corps centers required to establish behavior management systems?

(a)) Yes, each Job Corps center must establish and maintain its own student incentives system to encourage and reward students' accomplishments.

(b) The Job Corps center must establish and maintain a behavior management system, based on a behavior management plan, according to standards of conduct and procedures established by the Secretary. The behavior management plan must be approved by the Job Corps regional office and reviewed annually. The behavior management system must include a zero tolerance policy for violence and drugs as described in § 686.590. All criminal incidents will be promptly reported to local law enforcement.

§ 686.545 What is Job Corps' zero tolerance policy?

(a) All center operators must comply with Job Corps' zero tolerance policy as established by the Secretary. Job Corps has a zero tolerance policy for infractions including but not limited to:

(1) Acts of violence, as defined by the Secretary;

(2) Use, sale, or possession of a controlled substance, as defined at 21 U.S.C. 802;

(3) Abuse of alcohol;

(4) Possession of unauthorized goods; or

(5) Other illegal or disruptive activity.

(b) As part of this policy, all students must be tested for drugs as a condition of participation. (WIOA secs. 145(a)(2) and 152(b)(2))

(c) The zero tolerance policy specifies the offenses that result in the separation of students from the Job Corps. The center director is expressly responsible for determining when there is a violation of a specified offense.

§ 686.550 How does Job Corps ensure that students receive due process in disciplinary

actions?

The center operator must ensure that all students receive due process in disciplinary proceedings according to procedures developed by the Secretary. These procedures must include center fact-finding and behavior review boards, a code of sanctions under which the penalty of separation from Job Corps might be imposed, and procedures for students to submit an appeal to a Job Corps regional appeal board following a center's decision to discharge involuntarily the student from Job Corps.

§ 686.555 What responsibilities do Job Corps centers have in assisting students with child

care needs?

(a) Job Corps centers are responsible for coordinating with outreach and admissions agencies to assist applicants, whenever feasible, with making arrangements for child care. Prior to enrollment, a program applicant with dependent children who provides primary or custodial care must certify that suitable arrangements for child care have been established for the proposed period of enrollment.

(b) Child development programs may be located at Job Corps centers with the approval of the Secretary.

§ 686.560 What are the center's responsibilities in ensuring that students' religious rights

are respected?

(a)) Centers must ensure that a student has the right to worship or not worship as he or she chooses.

(b) Students who believe their religious rights have been violated may file complaints under the procedures set forth in 29 CFR part 37.

(c)) Requirements related to equal treatment of religious organizations in Department of Labor programs, and to protection of religious liberty of Department of Labor social service providers and beneficiaries, are found at subpart D of 29 CFR part 2. See also 20 CFR 683.255 and 683.285; 29 CFR part 37.

§ 686.565 Is Job Corps authorized to conduct pilot and demonstration projects?

Yes, the Secretary may undertake experimental, research and demonstration projects related

to the Job Corps program according to WIOA sec. 156(a), provided that such projects are developed, approved, and conducted in accordance with policies and procedures developed by the Secretary.

Subpart F—Student Support

§ 686.600 Are students provided with government-paid transportation to and from Job Corps centers?

Yes, Job Corps provides for the transportation of students between their homes and centers as described in policies and procedures issued by the Secretary.

§ 686.610 When are students authorized to take leaves of absence from their Job Corps centers?

(a) Job Corps students are eligible for annual leaves, emergency leaves and other types of

leaves of absence from their assigned centers according to criteria and requirements issued by the Secretary. Additionally, enrollees in Civilian Conservation Centers may take leave to provide assistance in addressing national, State, and local disasters, consistent with current laws and regulations, including child labor laws and regulations.

(b) Center operators and other service providers must account for student leave according to procedures issued by the Secretary.

§ 686.620 Are Job Corps students eligible to receive cash allowances and performance bonuses?

(a)) Yes, according to criteria and rates established by the Secretary, Job Corps students receive cash living allowances, performance bonuses, and allotments for care of dependents. Graduates receive post-separation transition allowances according to § 686.750.

(b) In the event of a student's death, any amount due under this section is paid according to the provisions of 5 U.S.C. 5582 governing issues such as designation of beneficiary, order of precedence, and related matters.

§ 686.630 Are student allowances subject to Federal payroll taxes?

Yes, Job Corps student allowances are subject to Federal payroll tax withholding and social security taxes. Job Corps students are considered to be Federal employees for purposes of Federal

payroll taxes. (WIOA sec. 157(a)(2))

§ 686.640 Are students provided with clothing?

Yes, Job Corps students are provided cash clothing allowances and/or articles of clothing, including safety clothing, when needed for their participation in Job Corps and their successful entry into the work force. Center operators and other service providers must issue clothing and clothing assistance to students according to rates, criteria, and procedures issued by the Secretary.

Subpart G—Career Transition and Graduate Services

§ 686.700 What are a Job Corps center's responsibilities in preparing students for career transition services?

Job Corps centers must assess and counsel students to determine their competencies, capabilities, and readiness for career transition services.

§ 686.710 What career transition services are provided for Job Corps enrollees?

Job Corps career transition services focus on placing program graduates in:

(a) Full-time jobs that are related to their career technical training and career pathway

that lead to economic self-sufficiency;

(b) Post-secondary education;

(c) Advanced training programs, including apprenticeship programs; or

(d) The Armed Forces.

§ 686.720 Who provides career transition services?

The one-stop delivery system must be used to the maximum extent practicable in placing graduates and former enrollees in jobs. (WIOA sec. 149(b)) Multiple other resources may also provide post-program services, including but not limited to Job Corps career transition service providers under a contract or other agreement with the Department of Labor, and State vocational rehabilitation agencies for individuals with disabilities.

§ 686.730 What are the responsibilities of career transition service providers?

(a)) Career transition service providers are responsible for:

(1) Contacting graduates;

(2) Assisting them in improving skills in resume preparation, interviewing techniques and job search strategies;

(3) Identifying job leads or educational and training opportunities through coordination with Local Workforce Development Boards, one-stop operators and partners, employers, unions and industry organizations;

(4) Placing graduates in jobs, apprenticeship, the Armed Forces, or post-secondary education or training, or referring former students for additional services in their local communities as appropriate; and

(5) Providing placement services for former enrollees according to procedures issued by the Secretary.

(b) Career transition service providers must record and submit all Job Corps placement information according to procedures established by the Secretary.

§ 686.740 What services are provided for program graduates?

According to procedures issued by the Secretary, career transition and support services must be provided to program graduates for up to 12 months after graduation.

§ 686.750 Are graduates provided with transition allowances?

Yes, graduates receive post-separation transition allowances according to policies and procedures established by the Secretary. Transition allowances are incentive-based to reflect a graduate's attainment of academic credentials and those associated with career technical training such as industry-recognized credentials.

§ 686.760 What services are provided to former enrollees?

(a) Up to 3 months of employment services, including career services offered through a one-stop center, may be provided to former enrollees.

(b) According to procedures issued by the Secretary, other career transition services as determined appropriate may be provided to former enrollees.

Subpart H—Community Connections

§ 686.800 How do Job Corps centers and service providers become involved in their local communities?

(a) The director of each Job Corps center must ensure the establishment and development of mutually beneficial business and community relationships and networks.

Establishing and developing networks includes relationships with:

(1) Local and distant employers;

(2) Applicable one-stop centers and Local Boards:

(3) Entities offering apprenticeship opportunities and youth programs;

(4) Labor-management organizations and local labor organizations;

(5) Employers and contractors that support national training programs and initiatives;

and

(6) Community-based organizations, non-profit organizations, and intermediaries providing workforce development-related services.

(b) Each Job Corps center also must establish and develop relationships with members of the community in which it is located. Members of the community should be informed of the projects of the Job Corps center and changes in the rules, procedures, or activities of the center that may affect the community. Events of mutual interest to the community and the Job Corps center should

be planned to create and maintain community relations and community support.

§ 686.810 What is the makeup of a workforce council and what are its responsibilities?

(a) Each Job Corps center must establish a workforce council, according to procedures established by the Secretary. The workforce council must include:

(1) Non-governmental and private sector employers;

(2) Representatives of labor organizations (where present) and of employees;

(3) Job Corps enrollees and graduates; and

(4) In the case of a single-State local area, the workforce council must include a representative of the State Board constituted under § 679.110.

(b) A majority of the council members must be business owners, chief executives or chief operating officers of nongovernmental employers or other private sector employers, who have substantial management, hiring or policy responsibility and who represent businesses with employment opportunities in the local area and the areas in which students will seek employment.

(c) The workforce council may include, or otherwise provide for consultation with, employers from outside the local area who are likely to hire a significant number of enrollees

from the Job Corps center.

(d) The workforce council must:

(1) Work with all applicable Local Boards and review labor market information to determine and provide recommendations to the Secretary regarding the center's career technical training offerings, including identification of emerging occupations suitable for training (WIOA sec. 154(c)(1));

(2) Review all relevant labor market information, including related information in the State Plan or the local plan, to:

(i) Recommend in-demand industry sectors or occupations in the area in which the center operates;

(ii) Determine employment opportunities in the areas in which enrollees intend to seek employment;

(iii) Determine the skills and education necessary to obtain the identified employment;

and

(iv) Recommend to the Secretary the type of career technical training that should be implemented at the center to enable enrollees to obtain the employment opportunities identified.

(3) Meet at least once every 6 months to reevaluate the labor market information, and other relevant information, to determine and recommend to the Secretary any necessary changes in

the career technical training provided at the center.

§ 686.820 How will Job Corps coordinate with other agencies?

(a) The Secretary issues guidelines for the national office, regional offices, Job Corps centers and operational support providers to use in developing and maintaining cooperative relationships with other agencies and institutions, including law enforcement, educational institutions, communities, and other employment and training programs and agencies.

(b) The Secretary develops polices and requirements to ensure linkages with the one-stop delivery system to the greatest extent practicable, as well as with other Federal, State, and local programs, and youth programs funded under title I of WIOA. These linkages enhance services to youth who face multiple barriers to employment and must include, where appropriate:

(1) Referrals of applicants and students;

(2) Participant assessment;

(3) Pre-employment and work maturity skills training;

(4) Work-based learning;

(5) Job search, occupational, and basic skills training; and

(6) Provision of continued services for graduates.

(c) Job Corps is identified as a required one-stop partner. Wherever practicable, Job Corps centers and operational support contractors must establish cooperative relationships and partnerships with one-stop centers and other one-stop partners, Local Boards, and other programs for youth.

Subpart I—Administrative and Management Provisions

§ 686.900 Are damages caused by the acts or omissions of students eligible for payment under the Federal Tort Claims Act?

Yes, students are considered Federal employees for purposes of the FTCA. (28 U.S.C. 2671 et seq.) Claims for such damage should be filed pursuant to the procedures found in 29 CFR part 15, subpart D.

§ 686.905 Are loss and damages that occur to persons or personal property of students at

Job Corps centers eligible for reimbursement?

Yes, the Job Corps may pay students for valid claims under the procedures found in 29 CFR part 15, subpart D.

§ 686.910 If a student is injured in the performance of duty as a Job Corps student, what

benefits may the student receive?

(a) Job Corps students are considered Federal employees for purposes of the Federal Employees' Compensation Act (FECA) as specified in sec. 157(a)(3) of WIOA. (29 U.S.C. 2897(a)(3))

(b) Job Corps students may be entitled to benefits under FECA as provided by 5 U.S.C. 8143 for injuries occurring in the performance of duty.

(c) Job Corps students must meet the same eligibility tests for FECA benefits that apply to all other Federal employees. The requirements for FECA benefits may be found at 5 U.S.C. 8101, et seq. and part 10 of this title. The Department of Labor's Office of Workers' Compensation Programs (OWCP) administers the FECA program; all FECA determinations are within the exclusive authority of the OWCP, subject to appeal to the Employees' Compensation Appeals Board.

(d) Whenever a student is injured, develops an occupationally related illness, or dies while in the performance of duty, the procedures of the OWCP, at part 10 of this title, must be followed. To assist OWCP in determining FECA eligibility, a thorough investigation of the circumstances and

a medical evaluation must be completed and required forms must be timely filed by the center operator with the Department's OWCP. Additional information regarding Job Corps FECA claims may be found in OWCP's regulations and procedures available on the Department's Web site located at www.dol.gov.

§ 686.915 When is a Job Corps student considered to be in the performance of duty?

(a)) Performance of duty is a determination that must be made by the OWCP under FECA, and is based on the individual circumstances in each claim.

(b) In general, residential students may be considered to be in the "performance of duty"

when:

(1) They are on center under the supervision and control of Job Corps officials;

(2) They are engaged in any authorized Job Corps activity;

(3) They are in authorized travel status; or

(4) They are engaged in any authorized offsite activity.

(c) Non-resident students are generally considered to be "in performance of duty" as Federal employees when they are engaged in any authorized Job Corps activity, from the time they arrive at any scheduled center activity until they leave the activity. The standard rules governing coverage of Federal employees during travel to and from work apply. These rules are described in guidance issued by the Secretary.

(d) Students are generally considered to be not in the performance of duty when:

(1) They are Absent Without Leave (AWOL);

(2) They are at home, whether on pass or on leave;

(3) They are engaged in an unauthorized offsite activity; or

(4) They are injured or ill due to their own willful misconduct, intent to cause injury or death to oneself or another, or through intoxication or illegal use of drugs.

§ 686.920 How are students protected from unsafe or unhealthy situations?

(a) The Secretary establishes procedures to ensure that students are not required or permitted to work, be trained, reside in, or receive services in buildings or surroundings or under

conditions that are unsanitary or hazardous. Whenever students are employed or in training for jobs, they must be assigned only to jobs or training which observe applicable Federal, State and local health and safety standards.

(b) The Secretary develops procedures to ensure compliance with applicable DOL Occupational Safety and Health Administration regulations and Wage and Hour Division regulations.

§ 686.925 What are the requirements for criminal law enforcement jurisdiction on center

property?

(a) All Job Corps property which would otherwise be under exclusive Federal legislative jurisdiction is considered under concurrent jurisdiction with the appropriate State and locality with respect to criminal law enforcement. Concurrent jurisdiction extends to all portions of the property, including housing and recreational facilities, in addition to the portions of the property used for education and training activities.

(b) Centers located on property under concurrent Federal-State jurisdiction must establish agreements with Federal, State and local law enforcement agencies to enforce criminal laws.

(c) The Secretary develops procedures to ensure that any searches of a student's person, personal area or belongings for unauthorized goods follow applicable right-to-privacy laws.

§ 686.930 Are Job Corps operators and service providers authorized to pay State or local

taxes on gross receipts?

(a)) A private for-profit or a non-profit Job Corps service provider is not liable, directly or indirectly, to any State or subdivision for any gross receipts taxes, business privilege taxes measured by gross receipts, or any similar taxes in connection with any payments made to or by such service provider for operating a center or other Job Corps program or activity. The service provider is not liable to any State or subdivision to collect or pay any sales, excise, use, or similar tax imposed upon the sale to or use by such deliverer of any property, service, or other item in connection with the operation of a center or other Job Corps program or activity. (WIOA sec. 158(d))

(b) If a State or local authority compels a center operator or other service provider to pay such taxes, the center operator or service provider may pay the taxes with Federal funds, but must document and report the State or local requirement according to procedures issued by the Secretary.

§ 686.935 What are the financial management responsibilities of Job Corps center

operators and other service providers?

(a)) Center operators and other service providers must manage Job Corps funds using

financial management information systems that meet the specifications and requirements of the Secretary.

(b) These financial management systems must:

(1) Provide accurate, complete, and current disclosures of the costs of their Job Corps activities;

(2) Ensure that expenditures of funds are necessary, reasonable, allocable and allowable in accordance with applicable cost principles;

(3) Use account structures specified by the Secretary;

(4) Ensure the ability to comply with cost reporting requirements and procedures issued by the Secretary; and

(5) Maintain sufficient cost data for effective planning, monitoring, and evaluation of program activities and for determining the allowability of reported costs.

§ 686.940 Are center operators and service providers subject to Federal audits?

(a)) Yes, Center operators and service providers are subject to Federal audits.

(b) The Secretary arranges for the survey, audit, or evaluation of each Job Corps center and service provider at least once every 3 years, by Federal auditors or independent public accountants. The Secretary may arrange for more frequent audits. (WIOA sec. 159(b)(2))

(c)) Center operators and other service providers are responsible for giving full cooperation and access to books, documents, papers and records to duly appointed Federal auditors and evaluators. (WIOA sec. 159(b)(1))

§ 686.945 What are the procedures for management of student records?

The Secretary issues guidelines for a system for maintaining records for each student during enrollment and for disposition of such records after separation.

§ 686.950 What procedures apply to disclosure of information about Job Corps students

and program activities?

(a) The Secretary develops procedures to respond to requests for information or records or other necessary disclosures pertaining to students.

(b) Department disclosure of Job Corps information must be handled according to the Freedom of Information Act and according to Department regulations at 29 CFR part 70.

(c) Job Corps contractors are not "agencies" for Freedom of Information Act purposes. Therefore, their records are not subject to disclosure under the Freedom of Information Act or 29 CFR part 70.

(d) The regulations at 29 CFR part 71 apply to a system of records covered by the Privacy Act of 1974 maintained by the Department or to a similar system maintained by a contractor, such as a screening agency, contract center operator, or career transition service

provider on behalf of the Job Corps.

§ 686.955 What are the reporting requirements for center operators and operational

support service providers?

The Secretary establishes procedures to ensure the timely and complete reporting of necessary financial and program information to maintain accountability. Center operators and operational support service providers are responsible for the accuracy and integrity of all reports and data they provide.

§ 686.960 What procedures are available to resolve complaints and disputes?

(a) Each Job Corps center operator and service provider must establish and maintain a grievance procedure for filing complaints and resolving disputes from applicants, students and/or other interested parties about its programs and activities. A hearing on each complaint or dispute must be conducted within 30 days of the filing of the complaint or dispute. A decision on the complaint must be made by the center operator or service provider, as appropriate, within 60 days after the filing of the complaint, and a copy of the decision must be immediately served, by first-class mail, on the complainant and any other party to the complaint. Except for complaints under § 670.470 or complaints alleging fraud or other criminal activity, complaints may be filed within 1 year of the occurrence that led to the complaint.

(b) The procedure established under paragraph (a) of this section must include procedures to process complaints alleging violations of sec. 188 of WIOA, consistent with Department nondiscrimination regulations implementing sec. 188 of WIOA at 29 CFR part 37 and § 670.998 of this chapter.

§ 686.965 How does Job Corps ensure that complaints or disputes are resolved in a timely

fashion?

(a) If a complaint is not resolved by the center operator or service provider in the time frames described in § 686.960, the person making the complaint may request that the Regional Director determine whether reasonable cause exists to believe that the Act or regulations for this part of the Act have been violated. The request must be filed with the Regional Director within 60 days from the date that the center operator or service provider should have issued the decision.

(b) Following the receipt of a request for review under paragraph (a) of this section, the Regional Director must determine within 60 days whether there has been a violation of the Act or the WIOA regulations. If the Regional Director determines that there has been a violation of the Act or regulations, (s)he may direct the operator or service provider to remedy the violation or direct the service provider to issue a decision to resolve the dispute according to the service provider's grievance procedures. If the service provider does not comply with the Regional

Director's decision within 30 days, the Regional Director may impose a sanction on the center

operator or service provider for violating the Act or regulations, and/or for failing to issue a decision.

Decisions imposing sanctions upon a center operator or service provider may be appealed to the DOL Office of Administrative Law Judges under 20 CFR 683.800 or 683.840.

§ 686.970 How does Job Corps ensure that centers or other service providers comply with

the Act and the Workforce Innovation and Opportunity Act regulations?

(a) If the Department receives a complaint or has reason to believe that a center or other service provider is failing to comply with the requirements of the Act or regulations, the Regional Director must investigate the allegation and determine within 90 days after receiving the complaint or otherwise learning of the alleged violation, whether such allegation or complaint is true.

(b) As a result of such a determination, the Regional Director may:

(1) Direct the center operator or service provider to handle a complaint through the grievance procedures established under § 686.960; or

(2) Investigate and determine whether the center operator or service provider is in compliance with the Act and regulations. If the Regional Director determines that the center or service provider is not in compliance with the Act or regulations, the Regional Director may take action to resolve the complaint under § 686.965(b), or will report the incident to the DOL Office of the Inspector General, as described in 20 CFR 683.620.

§ 686.975 How does Job Corps ensure that contract disputes will be resolved?

A dispute between the Department and a Job Corps contractor will be handled according to the Contract Disputes Act and applicable regulations.

§ 686.980 How does Job Corps resolve disputes between the U.S. Department of Labor and

the U.S. Department of Agriculture regarding the operation of Job Corps centers?

Disputes between the U.S. Department of Labor and the U.S. Department of Agriculture regarding operating a center will be handled according to the interagency agreement between the two agencies.

§ 686.985 What Department of Labor equal opportunity and nondiscrimination

regulations apply to Job Corps?

Nondiscrimination requirements, procedures, complaint processing, and compliance reviews are governed by, as applicable, provisions of the following Department of Labor regulations:

(a)) Regulations implementing sec. 188 of WIOA for programs receiving Federal financial assistance under WIOA found at 29 CFR part 37.

(b) 29 CFR part 33 for programs conducted by the Department of Labor; and

(c)) 41 CFR chapter 60 for entities that have a Federal government contract.

Subpart J--Performance

§ 686.1000 How is the performance of the Job Corps program assessed?

(a) The performance of the Job Corps program as a whole, and the performance of individual centers, outreach and admissions providers, and career transition service providers, is assessed in accordance with the regulations in this part and procedures and standards issued by the Secretary, through a national performance management system, including the Outcome Measurement System (OMS).

(b) The national performance management system will include measures that reflect the primary indicators of performance described in § 686.1010, the information needed to complete the Annual Report described in § 686.1040, and any other information the Secretary determines is necessary to manage and evaluate the effectiveness of the Job Corps program. The Secretary will issue annual guidance describing the performance management system and outcome measurement system.

(c) Annual performance assessments based on the measures described in paragraph (b) of this section are done for each center operator and other service providers, including outreach and admissions providers and career transition providers.

§ 686.1010 What are the primary indicators of performance for Job Corps centers and the

Job Corps program?

The primary indicators of performance for eligible youth are described in sec.

116(b)(2)(A)(ii) of WIOA. They are:

(a) The percentage of program participants who are in education or training activities, or in unsubsidized employment, during the second quarter after exit from the program (WIOA sec. 116(b)(2)(A)(ii)(I));

(b) The percentage of program participants who are in education or training activities, or in unsubsidized employment, during the fourth quarter after exit from the program (WIOA sec. 116(b)(2)(A)(ii)(II));

(c) The median earnings of program participants who are in unsubsidized employment during the second quarter after exit from the program (WIOA sec. 116(b)(2)(A)(i)(III));

(d) The percentage of program participants who obtain a recognized post-secondary credential, or a secondary school diploma or its recognized equivalent during participation in or within 1 year after exit from the program. (WIOA sec. 116(b)(2)(A)(i)(IV)) Program participants who obtain a secondary school diploma or its recognized equivalent will be included

in the percentage only if they have also obtained or retained employment, or are in an education

or training program leading to a recognized post-secondary credential, within 1 year after exit from the program (WIOA sec. 116(b)(2)(A)(iii));

(e) The percentage of program participants who, during a program year, are in an education or training program that leads to a recognized post-secondary credential or employment and who are achieving measurable skill gains toward such a credential or employment (WIOA sec. 116(b)(2)(A)(i)(V)); and

(f) The indicators of effectiveness in serving employers established by the Secretaries of Education and Labor, pursuant to sec. 116(b)(2)(A)(iv) of WIOA. (WIOA sec. 116(b)(2)(A)(i)(VI))

§ 686.1020 What are the indicators of performance for Job Corps outreach and admissions

providers?

The Secretary establishes performance indicators for outreach and admission service providers serving the Job Corps program. They include, but are not limited to:

(a) The number of enrollees recruited, compared to the established goals for such

recruitment, and the number of enrollees who remain committed to the program for 90 days after enrollment (WIOA sec. 159(c)(2)(A));

(b) The percentage and number of former enrollees, including the number dismissed under the zero tolerance policy described in sec. 152(b) of WIOA and § 686.545 (WIOA sec. 159(d)(1)(I));

(c) The maximum attainable percent of enrollees at the Job Corps center that reside in the State in which the center is located, and the maximum attainable percentage of enrollees at the Job Corps center that reside in the State in which the center is located and in surrounding

regions, as compared to the percentage targets established by the Secretary for the center for each of those measures (WIOA sec. 159(d)(1)(L)); and

(d) The cost per enrollee, calculated by comparing the number of enrollees at the center in a program year to the total budget for such center in the same program year. (WIOA sec. 159(d)(1)(M)).

§ 686.1030 What are the indicators of performance for Job Corps career transition service

providers?

The Secretary establishes performance indicators for career transition service providers serving the Job Corps program. These include, but are not limited to, the following:

(a) The primary indicators of performance for eligible youth in WIOA sec.

116(b)(2)(A)(ii), as listed in § 686.1010;

(b) The number of graduates who entered the Armed Forces (WIOA sec. 159(d)(1)(D));

(c) The number of graduates who entered apprenticeship programs (WIOA sec. 159(d)(1)(E));

(d) The number of graduates who entered unsubsidized employment related to the career technical training received through the Job Corps program (WIOA sec. 159(d)(1)(H));

(e) The number of graduates who entered unsubsidized employment not related to the education and training received through the Job Corps program (WIOA sec. 159(d)(1)(H));

(f) The percentage and number of graduates who enter post-secondary education (WIOA sec. 159(d)(1)(J)); and

(g) The average wage of graduates who entered unsubsidized employment (WIOA sec. 159(d)(1)(K)):

(1) On the first day of such employment, and

(2) On the day that is 6 months after such first day.

§ 686.1040 What information will be collected for use in the Annual Report?

The Secretary will collect and submit in the Annual Report described in sec. 159(c)(4) of WIOA, which will include the following information on each Job Corps center, and the Job Corps

program as a whole:

(a) Information on the performance, based on the performance indicators described § 686.1010, as compared to the expected level of performance established under § 686.1050 for each performance indicator;

(b) Information on the performance of outreach service providers and career transition service providers on the performance indicators established under §§ 686.1020 and 686.1030, as compared to the expected levels of performance established under § 686.1050 for each of those indicators;

(c) The number of enrollees served;

(d) Demographic information on the enrollees served, including age, race, gender, and education and income level;

(e) The number of graduates of a Job Corps center;

(f) The number of graduates who entered the Armed Forces;

(g) The number of graduates who entered apprenticeship programs;

(h) The number of graduates who received a regular secondary school diploma;

(i) The number of graduates who received a State recognized equivalent of a secondary school diploma;

(j) The number of graduates who entered unsubsidized employment related to the career technical training received through the Job Corps program and the number who entered unsubsidized employment not related to the education and training received;

(k) The percentage and number of former enrollees, including the number dismissed under the zero tolerance policy described in § 686.545;

(l) The percentage and number of graduates who enter post-secondary education;

(m) The average wage of graduates who enter unsubsidized employment:

(1) On the first day of such employment; and

(2) On the day that is 6 months after such first day;

(n) The maximum attainable percent of enrollees at a Job Corps center that reside in the State in which the center is located, and the maximum attainable percentage of enrollees at a Job Corps center that reside in the State in which the center is located and in surrounding regions, as compared to the percentage targets established by the Secretary for the center for each of those measures;

(o) The cost per enrollee, which is calculated by comparing the number of enrollees at the center in a program year to the total budget for such center in the same program year;

(p) The cost per graduate, which is calculated by comparing the number of graduates of the center in a program year compared to the total budget for such center in the same program year;

(q) Information regarding the state of Job Corps buildings and facilities, including a review of requested construction, rehabilitation, and acquisition projects, by each Job Corps center, and a review of new facilities under construction;

(r) Available information regarding the national and community service activities of enrollees, particularly those enrollees at Civilian Conservation Centers; and

(s) Any additional information required by the Secretary.

§ 686.1050 How are the expected levels of performance for Job Corps centers, outreach

and admissions providers and career transition service providers established?

(a) The Secretary establishes expected levels of performance for Job Corps centers, outreach and admissions providers and career transition service providers and the Job Corps program relating to each of the primary indicators of performance described in §§ 686.1010, 686.1020, and 686.1030.

(b) As described in § 686.1000, the Secretary will issue annual guidance describing the national performance management system and outcomes measurement system, which will communicate the expected levels of performance for each primary indicator of performance for each center, and each indicator of performance for each outreach and admission provider, and for each career transition service provider. Such guidance will also describe how the expected levels of performance were calculated.

§ 686.1060 How are center rankings established?

(a) The Secretary calculates annual rankings of center performance based on the performance management system described in § 686.1000 as part of the annual performance assessment described in § 686.1000(c).

(b) The Secretary will issue annual guidance that communicates the methodology for calculating the performance rankings for the year.

§ 686.1070 How and when will the Secretary use Performance Improvement Plans?

(a) The Secretary establishes standards and procedures for developing and implementing performance improvement plans.

(1) The Secretary will develop and implement a performance improvement plan for a center when that center fails to meet the expected levels of performance described in § 686.1050,

(i) The Secretary will consider a center to have failed to meet the expected level of performance if the center:

(A) Is ranked among the lowest 10 percent of Job Corps centers for the most recent preceding program year according to the rankings calculated under § 686.1060; and

(B) The center fails to achieve an average of 90 percent of the expected level of performance for all of the primary indicators.

(ii) For any program year that precedes the implementation of the establishment of the expected levels of performance under § 686.1050 and the application of the primary indicators of performance for Job Corps centers identified in § 686.1010, the Secretary will consider a center to have failed to meet the expected levels of performance if the center:

(A) Is ranked among the lowest 10 percent of Job Corps centers for the most recent preceding program year according to the rankings calculated under § 686.1060; and

(B) The center's composite OMS score for the program year is 88 percent or less of the year's OMS national average.

(2) The Secretary may also develop and implement additional performance improvement plans, which will require improvements for a Job Corps center that fails to meet criteria established by the Secretary other than the expected levels of performance.

(b) A performance improvement plan will require action be taken to correct identified performance issues within 1 year of the implementation of the plan (WIOA sec. 159(f)(2)), and it will identify criteria that must be met for the center to complete the performance improvement plan.

(1) The center operator must implement the actions outlined in the performance improvement plan.

(2) If the center fails to take the steps outlined in the performance improvement plan or fails to meet the criteria established to complete the performance improvement plan after 1 year, the center will be considered to have failed to improve performance under a performance improvement plan detailed in paragraph (a) of this section.

(i) Such a center will remain on a performance improvement plan and the Secretary will take action as described in paragraph (c) of this section.

(ii) If a Civilian Conservation Center fails to meet expected levels of performance relating to the primary indicators of performance specified in § 686.1010, or fails to improve performance under a performance improvement plan detailed in paragraph (a) of this section after 3 program years, the Secretary, in consultation with the Secretary of Agriculture, must select an entity to operate the Civilian Conservation Center on a competitive basis, in accordance with the requirements of § 686.310. (WIOA sec. 159(f)(4))

(c) Under a performance improvement plan, the Secretary may take the following actions, as necessary:

(1) Providing technical assistance to the center (WIOA sec. 159(f)(2)(A));

(2) Changing the management staff of a center (WIOA sec. 159(f)(2)(C));

(3) Changing the career technical training offered at the center (WIOA sec. 159(f)(2)(B));

(4) Replacing the operator of the center (WIOA sec. 159(f)(2)(D));

(5) Reducing the capacity of the center (WIOA sec. 159(f)(2)(E));

(6) Relocating the center (WIOA sec. 159(f)(2)(F)); or

(7) Closing the center (WIOA sec. 159(f)(2)(G)) in accordance with the criteria established under § 670.200(b).

14. Add part 687 to read as follows:

PART 687 – NATIONAL DISLOCATED WORKER GRANTS

Sec.

687.100 What are the types and purposes of national disclosed worker grants under the Workforce Innovation and Opportunity Act?

687.110 What are major economic dislocations or other events which may qualify for a national dislocated worker grant?

687.120 Who is eligible to apply for national dislocated worker grants?

687.130 When should applications for national dislocated worker grants be submitted to

the Department?

687.140 What activities are applicants expected to conduct before a national dislocated worker grant application is submitted?

687.150 What are the requirements for submitting applications for national dislocated worker grants?

687.160 What is the timeframe for the Department to issue decisions on national dislocated worker grant applications?

687.170 Who is eligible to be served under national dislocated worker grants?

687.180 What are the allowable activities under national dislocated worker grants?

687.190 How do statutory and regulatory waivers apply to national dislocated worker grants?

687.200 What are the program and administrative requirements that apply to national dislocated worker grants?

Authority: Secs. 170, 189, 503, Pub. L. 113-128, 128 Stat. 1425 (Jul. 22, 2014).

§ 687.100 What are the types and purposes of national disclosed worker grants under the

Workforce Innovation and Opportunity Act?

There are two types of national dislocated worker grants (NDWGs) under sec. 170 of the WIOA: Regular NDWGs and Disaster NDWGs.

(a)) Regular NDWGs provide career services for dislocated workers and other eligible populations. They are intended to expand service capacity temporarily at the State and local levels, by providing time-limited funding assistance in response to significant events that affect the U.S. workforce that cannot be accommodated with WIOA formula funds or other relevant existing resources.

(b) Disaster NDWGs allow for the creation of temporary employment to assist with clean-up and recovery efforts from emergencies or major disasters and the provision of career services in certain situations, as provided in § 687.180(b).

§ 687.110 What are major economic dislocations or other events which may qualify for a

national dislocated worker grant?

(a) Qualifying events for Regular NDWGs include:

(1) Mass layoffs affecting 50 or more workers from one employer in the same area;

(2) Closures and realignments of military installations;

(3) Layoffs that have significantly increased the total number of unemployed individuals in a community;

(4) Situations where higher than average demand for employment and training activities for dislocated members of the Armed Forces, dislocated spouses of members of the Armed Forces on active duty (as defined in 10 U.S.C. 101(d)(1)), or members of the Armed Forces described in § 687.170(a)(1)(iii), exceeds State and local resources for providing such activities; and

(5) Other events, as determined by the Secretary.

(b) Qualifying events for Disaster NDWGs include:

(1) Emergencies or major disasters, as defined in paragraphs (1) and (2), respectively, of sec. 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(1) and (2)) which have been declared eligible for public assistance by the Federal Emergency Management Agency (FEMA);

(2) An emergency or disaster situation of national significance that could result in a potentially large loss of employment, as declared or otherwise recognized by the chief official of a Federal Agency with jurisdiction over the Federal response to the emergency or disaster situation; and

(3) Situations where a substantial number of workers from a State, tribal area, or outlying area in which an emergency or disaster has occurred relocate to another State, tribal

area, or outlying area.

§ 687.120 Who is eligible to apply for national dislocated worker grants?

(a) For Regular NDWGs, the following entities are eligible to apply:

(1) States or outlying areas, or a consortium of States;

(2) Local Boards, or a consortium of boards;

(3) An entity described in sec. 166(c) of WIOA relating to Native American programs;

and,

(4) Other entities determined to be appropriate by the Governor of the State or outlying area involved; and

(5) Other entities that demonstrate to the Secretary the capability to respond effectively to circumstances relating to particular dislocations.

(b) For Disaster NDWGs, only States, outlying areas, and Indian tribal governments as defined by the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C.

5122(6)) are eligible to apply.

§ 687.130 When should applications for national dislocated worker grants be submitted to

the Department?

(a) Applications for Regular NDWGs may be submitted at any time during the year and should be submitted to respond to eligible events as soon as possible when:

(1) The applicant receives a notification of a mass layoff or a closure as a result of a Worker Adjustment and Retraining Notification (WARN) Act notice, a general announcement, or some other means, or in the case of applications to address situations described in § 687.110(a)(4), when higher than average demand for employment and training activities for those members of the Armed Forces and military spouses exceeds State and local resources for providing such activities;

(2) Worker need and interest in services has been determined through Rapid Response, or other means, and is sufficient to justify the need for a NDWG; and

(3) A determination has been made, in collaboration with the applicable local area, that State and local formula funds are inadequate to provide the level of services needed by the affected workers.

(b) Applications for Disaster NDWGs to respond to an emergency or major disaster should be submitted as soon as possible when:

(1) As described in § 687.110(b)(1), FEMA has declared that the affected area is eligible for

public assistance;

(2) An emergency or disaster situation of national significance that could result in a potentially large loss of employment occurs, and the Federal agency with jurisdiction over the Federal response has issued an appropriate declaration, as described in § 687.110(b)(2) (such applications must indicate the applicable Federal agency declaration, describe the impact on the local and/or State economy, and describe the proposed activities); or

(3) A substantial number of workers from a State, tribal area, or outlying area in which an emergency or disaster has occurred relocate to another State, tribal area, or outlying area, as provided under § 687.110(b)(3), and interest in services has been determined and is sufficient to justify the need for a NDWG.

§ 687.140 What activities are applicants expected to conduct before a national dislocated

worker grant application is submitted?

Prior to submitting an application for NDWG funds, applicants must:

(a) For Regular NDWGs:

(1) Collect information to identify the needs and interests of the affected workers through

Rapid Response activities (described in § 682.330), or other means;

(2) Provide appropriate services to eligible workers with State and local funds, including funds from State allotments for dislocated worker training and statewide activities provided under sec. 132(b)(2)(B) of WIOA, as available; and

(3) Coordinate with the Local Board(s) and chief elected official(s) of the local area(s) in which the proposed NDWG project is to operate.

(b) For Disaster NDWGs:

(1) Conduct a preliminary assessment of the clean-up and humanitarian needs of the affected areas;

(2) Put a mechanism in place to reasonably ascertain that there is a sufficient population of eligible individuals to conduct the planned work; and

(3) Coordinate with the Local Board(s) and chief elected official(s) of the local area(s) in which the proposed project is to operate.

§ 687.150 What are the requirements for submitting applications for national dislocated

worker grants?

The Department will publish additional guidance on NDWGs and the requirements for submitting applications for NDWGs. A project implementation plan must be submitted after

receiving the NDWG award. The additional guidance also will identify the information which must be included in the required project implementation plan. The project implementation plan will include more detailed information than is required for the initial application.

§ 687.160 What is the timeframe for the Department to issue decisions on national

dislocated worker grant applications?

The Department will issue a final decision on a NDWG application within 45 calendar days of receipt of an application that meets the requirements of this part. Applicants are strongly encouraged to review their NDWG application submissions carefully and consult with the appropriate Employment and Training Administration Regional Office to ensure their applications meet the requirements established in this part and those that may be set forth in additional guidance.

§ 687.170 Who is eligible to be served under national dislocated worker grants?

(a) For Regular NDWGs:

(1) In order to receive career services, as prescribed by sec. 134(c)(2)(A) of WIOA and § 680.130(a) of this chapter under a NDWG, an individual must be:

(i) A dislocated worker within the meaning of sec. 3(15) of WIOA;

(ii) A person who is either:

(A)) A civilian employee of the Department of Defense or the Department of Energy employed at a military installation that is being closed or will undergo realignment within 24 months after the date of determination of eligibility; or

(B) An individual employed in a non-managerial position with a Department of Defense contractor determined by the Secretary of Defense to be at risk of termination from employment as a result of reductions in defense expenditures and whose employer is converting from defense to non-defense applications in order to prevent worker layoffs; or

(iii) A member of the Armed Forces who:

(A) was on active duty or full-time National Guard duty;

(B)) is involuntarily separated from active duty or full-time National Guard duty (as defined in 10 U.S.C. 1141), or is separated from active duty or full-time National Guard duty pursuant to a special separation benefits program under 10 U.S.C. 1174a or the voluntary separation incentive program under 10 U.S.C. 1175;

(C) is not entitled to retired or retained pay incident to the separation described in paragraph (a)(1)(ii) of this section; and

(D) applies for employment and training assistance under this part before the end of the 180-day period beginning on the date of the separation described in paragraph (a)(1)(ii) of this

section.

(iv) For Regular NDWGs awarded for situations described in § 687.110(a)(4), a person

who is:

(A) A dislocated member of the Armed Forces, or member of the Armed Forces described in paragraph (a)(1)(iii) of this section; or

(B) The dislocated spouse of a member of the Armed Forces on active duty (as defined in 10 U.S.C. 101(d)(1)).

(b) For Disaster NDWGs:

(1) In order to be eligible to receive disaster relief employment under sec. 170(b)(1)(B)(i) of WIOA, an individual must be:

(i) A dislocated worker;

(ii) A long-term unemployed individual;

(iii) An individual who is temporarily or permanently laid off as a consequence of the emergency or disaster; or

(iv) An individual who is self-employed and becomes unemployed or significantly

underemployed as a result of the emergency or disaster.

(2) In order to be eligible to receive employment-related assistance, and in rare instances, humanitarian-related temporary employment under sec. 170(b)(1)(B)(ii) of WIOA, an individual must have relocated or evacuated from an area as a result of a disaster that has been declared or otherwise recognized, and be:

(i) A dislocated worker;

(ii) A long-term unemployed individual;

(iii) An individual who is temporarily or permanently laid off as a consequence of the emergency or disaster; or

(iv) An individual who is self-employed and becomes unemployed or significantly

underemployed as a result of the emergency or disaster.

§ 687.180 What are the allowable activities under national dislocated worker grants?

(a) For Regular NDWGs:

(1) Employment and training activities include career services and training authorized at secs. 134(c)-(d) and 170(b)(1) of WIOA. The services to be provided in a particular project are negotiated between the Department and the grantee, taking into account the needs of the target population covered by the grant, and may be changed through grant modifications, if necessary.

(2) NDWGs may provide for supportive services, including needs-related payments (subject to the restrictions in sec. 134(d)(3) of WIOA, where applicable), to help workers who require such assistance to participate in the activities provided for in the grant. Generally, the terms of a grant must be consistent with local policies governing such financial assistance under its formula funds (including the payment levels and duration of payments). The terms of the grant agreement may diverge from established local policies, in the following instances:

(i) If unemployed dislocated workers served by the project are not able to meet the 13 or 8 weeks enrollment in training requirement established by sec. 134(d)(3)(B) of WIOA because of the lack of formula or NDWG funds in the State or local area at the time of the dislocation, such individuals may be eligible for needs-related payments if they are enrolled in training by the end of the 6th week following the date of the NDWG award; or

(ii) Under other circumstances as specified in the NDWG application requirements.

(b) For Disaster NDWGs: NDWG funds provided under sec. 170(b)(1)(B) of WIOA can support a different array of activities, depending on the circumstances surrounding the situation for which the grant was awarded:

(1) For NDWGs serving individuals in a disaster area declared eligible for public

assistance by FEMA disaster relief, employment is authorized to support projects that provide

food, clothing, shelter, and other humanitarian assistance for emergency and disaster victims, and projects regarding demolition, cleaning, repair, renovation, and reconstruction of damaged and destroyed structures, facilities, and lands located within the disaster area and in offshore areas related to the emergency or disaster in coordination with the Administrator of FEMA. Employment and training activities may also be provided, as appropriate. An individual's disaster relief employment is limited to 12 months or less for work related to recovery from a single emergency or disaster. The Secretary may extend an individual's disaster relief employment for up to an additional 12 months, if it is requested and sufficiently justified by the State.

(2) For NDWGs serving individuals who have relocated from a disaster area, only career services and training activities will be authorized, except where temporary employment for humanitarian assistance is appropriate.

(3) For NDWGs awarded to States for events that have designations from Federal agencies (other than FEMA) that recognize an emergency or disaster situation as one of national significance that could result in a potentially large loss of employment, disaster relief employment and/or career services may be authorized, depending on the circumstances associated with the specific event.

(4) Disaster NDWG funds may be expended through public and private agencies and organizations engaged in the disaster relief, humanitarian assistance, and clean-up projects described in this paragraph (b) of this section.

§ 687.190 How do statutory and regulatory waivers apply to national dislocated worker

grants?

(a)) Grantees may request and the Department may approve the application of existing general statutory or regulatory waivers to a NDWG award. The application for NDWG grant funds must describe any statutory waivers which the applicant wishes to apply to the project that the State and/or Local Board, as applicable, have been granted under its waiver plan. The Department will consider such requests as part of the overall application review and decision process.

(b) If, during the operation of the project, the grantee wishes to apply a waiver not identified in the application, the grantee must request a modification which includes the provision to be waived, the operational barrier to be removed, and the effect upon the outcome of the project.

§ 687.200 What are the program and administrative requirements that apply to national

dislocated worker grants?

(a) Unless otherwise authorized in a NDWG agreement, the financial and administrative rules contained in part 683 apply to awards under this part.

(b) Exceptions include:

(1) Funds provided in response to a disaster may be used for temporary job creation in areas declared eligible for public assistance by FEMA, and, in some instances, areas impacted by an

emergency or disaster situation of national significance, as provided in § 687.110(b)(2), and subject to the limitations of sec. 170(d) of WIOA, this part, and any additional guidance issued by the Department;

(2) Per sec. 170(d)(4) of WIOA, in extremely limited instances, as determined by the Secretary or the Secretary's designee, any Disaster NDWG funds that are available for expenditure under any grant awarded under this part may be used for additional disasters or situations of national significance experienced by the State in the same program year the funds were awarded;

(3) NDWG funds may be used to pay an appropriate level of administrative costs based on the design and complexity of the project. The Department will negotiate administration costs with the applicant as part of the application review and grant award and modification processes;

(4) The period of availability for expenditure of funds under a NDWG is specified in the grant agreement;

(5) The Department may establish supplemental reporting, monitoring, and oversight requirements for NDWGs. The requirements will be identified in the grant application instructions or the grant document; and

(6) The Department may negotiate and fund projects under terms other than those specified in this part where it can be clearly demonstrated that such adjustments will achieve a greater positive benefit for the workers and/or communities being assisted.

15. Add part 688 to read as follows:

PART 688 – PROVISIONS GOVERNING THE YOUTHBUILD PROGRAM

Subpart A—Purpose and Definitions

Sec.

688.100 What is YouthBuild?

688.110 What are the purposes of the YouthBuild program?

688.120 What definitions apply to this part?

Subpart B—Funding and Grant Applications

Sec.

688.200 How are YouthBuild grants funded and administered?

688.210 How does an eligible entity apply for grant funds to operate a YouthBuild program?

688.220 How are eligible entities selected to receive grant funds?

688.230 What are the minimum requirements to apply for YouthBuild funds?

688.240 How are eligible entities notified of approval for grant funds?

Subpart C—Program Requirements

Sec.

688.300 Who is an eligible participant?

688.310 Are there special rules that apply to veterans?

688.320 What eligible activities may be funded under the YouthBuild program?

688.330 What level of training qualifies a construction project as a qualifying work site under the YouthBuild program?

688.340 What timeframes apply to participation?

688.350 What timeframes must be devoted to education and workforce investment or other activities?

688.360 What timeframes apply to follow-up services?

688.370 What are the requirements for exit from the YouthBuild program?

688.380 What is the role of the YouthBuild grantee in the one-stop system?

Subpart D—Performance Indicators

Sec.

688.400 What are the performance indicators for YouthBuild grants?

688.410 What are the required levels of performance for the performance indicators?

688.420 What are the reporting requirements for YouthBuild grantees?

688.430 What are the due dates for quarterly reporting?

Subpart E—Administrative Rules, Costs, and Limitations

Sec.

688.500 What administrative regulations apply to the YouthBuild program?

688.510 How may grantees provide services under the YouthBuild program?

688.520 What cost limits apply to the use of YouthBuild program funds?

688.530 What are the cost-sharing or matching requirements of the YouthBuild program?

688.540 What are considered to be leveraged funds?

688.550 How are the costs associated with real property treated in the YouthBuild program?

688.560 What participant costs are allowable under the YouthBuild program?

688.570 Does the Department allow incentive payments in the YouthBuild program?

688.580 What effect do payments to YouthBuild participants have on eligibility for other Federal needs-based benefits?

688.590 What program income requirements apply under the YouthBuild program?

688.600 Are YouthBuild programs subject to the Davis-Bacon Act labor standards?

688.610 What are the recordkeeping requirements for YouthBuild programs?

Subpart F—Additional Requirements

Sec.

688.700 What are the safety requirements for the YouthBuild program?

688.710 What are the reporting requirements for youth safety?

688.720 What environmental protection laws apply to the YouthBuild program?

688.730 What requirements apply to YouthBuild housing?

Authority: Secs. 171, 189, 503, Pub. L. 113-128, 128 Stat. 1425 (Jul. 22, 2014).

Subpart A—Purpose and Definitions

§ 688.100 What is YouthBuild?

(a) YouthBuild is a workforce development program that provides employment, education, leadership development, and training opportunities to disadvantaged and low-income youth between the ages of 16 and 24, most of whom are secondary school drop outs and are either a member of a low-income family, a foster care youth, a youth who is homeless, an offender, a youth with a disability, a child of an incarcerated parent, or a migrant youth.

(b) Program participants receive education services that may lead to either a high school diploma or its State-recognized equivalent. Further, they receive occupational skills training and are encouraged to pursue post-secondary education or additional training, including registered apprenticeship and pre-apprenticeship programs. The program is designed to create a skilled workforce either in the construction industry, through the rehabilitation and construction of housing for homeless and low-income individuals and families, as well as public facilities, or in

other in-demand jobs. The program also benefits the larger community because it provides increased access to affordable housing.

§ 688.110 What are the purposes of the YouthBuild program?

The overarching goal of the YouthBuild program is to provide disadvantaged and low-income youth the opportunity to obtain education and employment skills in local in-demand jobs to achieve economic self-sufficiency. Additionally, the YouthBuild program has as goals:

(a) To enable disadvantaged youth to obtain the education and employment skills necessary to achieve economic self-sufficiency through employment in in-demand occupations and pursuit of post-secondary education and training opportunities;

(b) To provide disadvantaged youth with opportunities for meaningful work and service to

their communities;

(c) To foster the development of employment and leadership skills and commitment to community development among youth in low-income communities;

(d) To expand the supply of permanent affordable housing for homeless individuals and families, homeless youth, and low-income families by utilizing the talents of disadvantaged youth. The program seeks to increase the number of affordable and transitional housing units available to decrease the rate of homelessness in communities with YouthBuild programs.

(e) To improve the quality and energy efficiency of community and other non-profit and public facilities, including those that are used to serve homeless and low-income families.

§ 688.120 What definitions apply to this part?

In addition to the definitions at sec. 3 of WIOA and 20 CFR 675.300, the following definitions apply:

Adjusted income means, with respect to a family, the amount (as determined by the Housing Development Agency) of the income of the members of the family residing in a dwelling unit or the persons on a lease, after any income exclusions as follows:

(1) Mandatory exclusions. In determining adjusted income, a Housing Development Agency must exclude from the annual income of a family the following amounts:

(2) Elderly and disabled families. $400 for any elderly or disabled family.

(3) Medical expenses. The amount by which three percent of the annual family income

is exceeded by the sum of:

(i) Unreimbursed medical expenses of any elderly family or disabled family;

(ii) Unreimbursed medical expenses of any family that is not covered under paragraph (3)(i) of this definition, except that this paragraph applies only to the extent approved in appropriation Acts; and

(iii) Unreimbursed reasonable attendant care and auxiliary apparatus expenses for each handicapped member of the family, to the extent necessary to enable any member of such family (including such handicapped member) to be employed.

(4) Child care expenses. Any reasonable child care expenses necessary to enable a

member of the family to be employed or to further his or her education.

(5) Minors, students, and persons with disabilities. $480 for each member of the family residing in the household (other than the head of the household or his or her spouse) who is less than 18 years of age or is attending school or vocational training on a full-time basis, or who is 18 years of age or older and is a person with disabilities.

(6) Child support payments. Any payment made by a member of the family for the support and maintenance of any child who does not reside in the household, except that the amount excluded under this clause may not exceed $480 for each child for whom such payment is made; except that this clause applies only to the extent approved in appropriations Acts.

(7) Spousal support expenses. Any payment made by a member of the family for the support and maintenance of any spouse or former spouse who does not reside in the household, except that the amount excluded under this clause must not exceed the lesser of the amount that such family member has a legal obligation to pay, or $550 for each individual for whom such payment is made; except that this clause applies only to the extent approved in appropriations Acts.

(8) Earned income of minors. The amount of any earned income of a member of the family who is not:

(i) 18 years of age or older; and

(ii) The head of the household (or the spouse of the head of the household).

(9) Permissive exclusions for public housing. In determining adjusted income, a Housing Development Agency may, in the discretion of the agency, establish exclusions from the annual income of a family residing in a public housing dwelling unit. Such exclusions may include the following amounts:

(10) Excessive travel expenses. Excessive travel expenses in an amount not to exceed $25 per family per week, for employment or education-related travel.

(11) Earned income. An amount of any earned income of the family, established at the discretion of the Housing Development Agency, which may be based on—

(i) All earned income of the family,

(ii) The amount earned by particular members of the family;

(iii) The amount earned by families having certain characteristics; or

(iv) The amount earned by families or members during certain periods or from certain sources.

(12) Others. Such other amounts for other purposes, as the Housing Development Agency may establish.

Applicant means an eligible entity that has submitted an application under § 688.210.

Basic Skills Deficient means an individual:

(1) Who is a youth, that the individual has English reading, writing, or computing skills at or below the 8th grade level on a generally accepted standardized test; or

(2) Who is a youth or adult, that the individual is unable to compute or solve problems, or read, write, or speak English, at a level necessary to function on the job, in the individual's family, or in society.

Community or other public facility means those facilities which are either privately

owned by non-profit organizations, including faith-based and community-based organizations, and publicly used for the benefit of the community, or publicly owned and publicly used for the benefit of the community.

Construction Plus means the inclusion of occupational skills training for YouthBuild participants in in-demand occupations other than construction.

Eligible entity means a public or private non-profit agency or organization (including a consortium of such agencies or organizations), including:

(1) A community-based organization;

(2) A faith-based organization;

(3) An entity carrying out activities under this title, such as a Local Board;

(4) A community action agency;

(5) A State or local housing development agency;

(6) An Indian tribe or other agency primarily serving Indians;

(7) A community development corporation;

(8) A State or local youth service or conservation corps; and

(9) Any other entity eligible to provide education or employment training under a Federal program (other than the program carried out under this section).

English language learner, when used with respect to a participant, means an eligible individual who has limited ability in reading, writing, speaking, or comprehending the English language, and:

(1) Whose native language is a language other than English; or

(2) Who lives in a family or community environment where a language other than English is the dominant language.

Exit, as used in § 688.400, has the same meaning as in § 676.150(c).

Follow-up services include:

(1) The leadership development and supportive service activities listed in §§ 681.520 and 681.570;

(2) Regular contact with a youth participant's employer, including assistance in addressing work-related problems that arise;

(3) Assistance in securing better paying jobs, career development and further education;

(4) Work-related peer support groups;

(5) Adult mentoring; and

(6) Services necessary to ensure the success of youth participants in employment and/or post-secondary education.

Homeless individual means an individual who lacks a fixed, regular, and adequate nighttime residence and includes an individual who:

(1) Is sharing the housing of other persons due to loss of housing, economic hardship, or

similar reason;

(2) Is living in a motel, hotel, trailer park, or campground due to the lack of alternative adequate accommodations;

(3) Is living in an emergency or transitional shelter;

(4) Is abandoned in a hospital; or is awaiting foster care placement;

(5) An individual who has a primary nighttime residence that is a public or private place not designed for or ordinarily used as regular sleeping accommodation for human beings; or

(6) Migratory children who qualify as homeless under this section because the children are living in circumstances described in this definition.

Homeless child or youth means an individual who lacks a fixed, regular, and adequate

nighttime residence and includes:

(1) Children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason;

(2) Are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations;

(3) Are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

(4) Children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;

(5) Children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; or

(6) Migratory children who qualify as homeless for the purposes of this part because the children are living in circumstances described in this definition.

Housing Development Agency means any agency of a Federal, State or local government, or any private non-profit organization, that is engaged in providing housing for homeless individuals or low-income families.

Income, as defined in the United States Housing Act of 1937 (42 U.S.C. 1437 a(b)(2)), means income is from all sources of each member of the household, as determined in accordance with the criteria prescribed by the Secretary of Labor, in consultation with the Secretary of Agriculture, except that any amounts not actually received by the family and any amounts which would be eligible for exclusion under sec. 1382b(a)(7) of the United States Housing Act of 1937, may not be considered as income under this definition.

In-Demand Industry Sector or Occupation means:

(1) An industry sector that has a substantial current or potential impact (including through jobs that lead to economic self-sufficiency and opportunities for advancement) on the State, regional, or local economy, as appropriate, and that contributes to the growth or stability of other supporting business, or the growth of other industry sectors; or

(2) An occupation that currently has or is projected to have a number of positions (including positions that lead to economic self-sufficiency and opportunities for advancement) in an industry sector so as to have a significant impact on the State, regional, or local economy, as appropriate.

Indian, as defined in the Indian Self- Determination and Education Assistance Act (25

U.S.C. 450b), means a person who is a member of an Indian tribe.

Indian tribe means any Indian tribe, band, nation, or other organized group or

community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) (43 U.S.C.

1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Individual with a disability means an individual:

(1) With a physical or mental impairment that substantially limits one or more major life activities of such individual;

(2) With a record of such an impairment; or

(3) Regarded as having such an impairment.

(i) An individual is regarded as having such an impairment if the individual establishes that he or she has been subjected to an action prohibited under the Americans with Disabilities Act of 1990 because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

(ii) An individual is not considered an individual with a disability under paragraph (3) of this section if the impairment has an actual or expected duration of 6 months or less.

(4) For purposes of paragraphs (1) through (3) of this definition, major life activity, includes, but is not limited to:

(i) Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working; and

(ii) The operation of a major bodily function, including but not limited to, functions of the

immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

Low-income family means a family whose income does not exceed 80 percent of the median income for the area unless the Secretary determines that a higher or lower ceiling is warranted. This definition includes families consisting of one person as defined by 42 U.S.C. 1437a(b)(3).

Migrant youth means a youth, or a youth who is the dependent of someone who, during the previous 12 months has:

(1) Worked at least 25 days in agricultural labor that is characterized by chronic unemployment or underemployment;

(2) Made at least $800 from agricultural labor that is characterized by chronic unemployment or underemployment, if at least 50 percent of his or her income came from such agricultural labor;

(3) Was employed at least 50 percent of his or her total employment in agricultural labor that is characterized by chronic unemployment or underemployment; or

(4) Was employed in agricultural labor that requires travel to a jobsite such that the farmworker is unable to return to a permanent place of residence within the same day.

Needs-based payments means additional payments beyond regular stipends for program participation that are based on defined needs that enable a youth to participate in the program.

Occupational skills training means an organized program of study that provides specific vocational skills that lead to proficiency in performing actual tasks and technical functions required by certain occupational fields at entry, intermediate, or advanced levels. Occupational skills training includes training programs that lead to recognized post-secondary credentials that align with in-demand industry sectors or occupations in the local area. Such training must:

(1) Be outcome-oriented and focused on an occupational goal specified in the individual service strategy;

(2) Be of sufficient duration to impart the skills needed to meet the occupational goal; and

(3) Result in attainment of a recognized post-secondary credential.

Offender means an adult or juvenile who:

(1) Is or has been subject to any stage of the criminal justice process, and who may benefit from WIOA services; or

(2) Requires assistance in overcoming artificial barriers to employment resulting from a

record of arrest or conviction.

Participant means an individual who has been determined eligible to participate in the

YouthBuild program, and that enrolls in the program and receives services or training described in § 688.320.

Pre-apprenticeship means a program or set of strategies designed to prepare individuals to

enter and succeed in a registered apprenticeship program and has a documented partnership with at least one, if not more, registered apprenticeship programs. A quality pre-apprenticeship program incorporates at least one of the following elements:

(1) Approved training and curriculum;

(2) Strategies for long-term success;

(3) Access to appropriate support services;

(4) Promotes greater use of registered apprenticeship to increase future opportunities;

(5) Meaningful hands-on training that does not displace paid employees; and

(6) Facilitated entry and/or articulation.

Recognized post-secondary credential means a credential consisting of an industry-recognized certificate or certification, a certificate of completion of an apprenticeship, a license recognized by the State involved or Federal government, or an associate or baccalaureate degree.

Registered apprenticeship program means an apprenticeship program that:

(1) Is registered under the Act of August 16, 1937 (commonly known as the "National Apprenticeship Act"; 50 Stat. 664, chapter 663; 20 U.S.C. 50 et seq.); and

(2) Meets such other criteria as the Secretary may establish.

School dropout means an individual who no longer attends any school and who has not received a secondary school diploma or its State-recognized equivalent.

Secondary school means a nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State law,

except that the term does not include any education beyond grade twelve.

Section 3 means to a program described in sec. 3 of the Housing and Urban Development Act of 1968, as amended by the Housing and Community Development Act of 1992.

Supportive services means services that enable an individual to participate in WIOA activities. These services include, but are not limited to, the following:

(1) Linkages to community services;

(2) Assistance with transportation;

(3) Assistance with child care and dependent care;

(4) Referrals to child support;

(5) Assistance with housing;

(6) Needs-related payments;

(7) Assistance with educational testing;

(8) Reasonable accommodations for youth with disabilities

(9) Referrals to medical services; and

(10) Assistance with uniforms or other appropriate work attire and work-related tools, including such items as eye glasses and protective eye gear.

Transitional housing means housing provided to ease the movement of individuals and families experiencing homelessness to permanent housing within 24 months or such longer period.

YouthBuild program means any program that receives assistance under this section and provides disadvantaged youth with opportunities for employment, education, leadership development, and training through the rehabilitation (which for purposes of this section, includes energy efficiency enhancements) or construction of housing for homeless individuals and low-

income families, and public facilities.

Youth in foster care means youth currently in foster care or youth who have ever been in

foster care.

Subpart B—Funding and Grant Applications

§ 688.200 How are YouthBuild grants funded and administered?

The Secretary uses funds authorized for appropriation under WIOA sec. 171(i) to administer YouthBuild as a national program under title I, subtitle D of the Act. YouthBuild grants are awarded to eligible entities, as defined in § 688.120, through the competitive selection process described in § 688.210.

§ 688.210 How does an eligible entity apply for grant funds to operate a YouthBuild

program?

The Secretary announces the availability of grant funds through a Funding Opportunity Announcement (FOA). The FOA contains instructions for what the Department requires in the grant application, describes eligibility requirements, the rating criteria that the Department will use in

reviewing grant applications, and special reporting requirements to operate a YouthBuild project. The FOA, along with the requisite forms needed to apply for grant funds, can be found at http://www.doleta.gov/grants/find_grants.cfm.

§ 688.220 How are eligible entities selected to receive grant funds?

In order to receive funds under the YouthBuild program, an eligible entity must meet selection criteria established by the Secretary which include:

(a) The qualifications or potential capabilities of an applicant;

(b) An applicant's potential to develop a successful YouthBuild program;

(c) The need for an applicant's proposed program, as determined by the degree of economic distress of the community from which participants would be recruited (measured by indicators such as poverty, youth unemployment, and the number of individuals who have dropped out of secondary school) and of the community in which the housing and community

and public facilities proposed to be rehabilitated or constructed are located (measured by indicators such as incidence of homelessness, shortage of affordable housing, and poverty);

(d) The commitment of an applicant to provide skills training, leadership development, counseling and case management, and education to participants;

(e) The focus of a proposed program on preparing youth for local in-demand sectors or occupations, or post-secondary education and training opportunities;

(f) The extent of an applicant's coordination of activities to be carried out through the

proposed program with:

(1) Local Boards, one-stop career center operators, and one-stop partners participating in the operation of the one-stop delivery system involved, or the extent of the applicant's good faith efforts, as determined by the Secretary, in achieving such coordination;

(2) Public education, criminal justice, housing and community development, national service, or post-secondary education or other systems that relate to the goals of the proposed program; and

(3) Employers in the local area.

(g) The extent to which a proposed program provides for inclusion of tenants who were previously homeless individuals or families in the rental of housing provided through the program;

(h) The commitment of additional resources to the proposed program (in addition to the funds made available through the grant) by:

(1) An applicant;

(2) Recipients of other Federal, State, or local housing and community development assistance who will sponsor any part of the rehabilitation, construction, operation and

maintenance, or other housing and community development activities undertaken as part of the proposed program; or

(3) Entities carrying out other Federal, State, or local activities or activities conducted by Indian tribes, including vocational education programs, adult and language instruction educational programs, and job training using funds provided under WIOA;

(i) An applicant's ability to enter partnerships with:

(1) Education and training providers including:

(i) The kindergarten through twelfth grade educational system;

(ii) Adult education programs;

(iii) Community and technical colleges;

(iv) Four-year colleges and universities;

(v) Registered apprenticeship programs; and

(vi) Other training entities;

(2) Employers, including professional organizations and associations. An applicant will be evaluated on the extent to which employers participate in:

(i) Defining the program strategy and goals;

(ii) Identifying needed skills and competencies;

(iii) Designing training approaches and curricula;

(iv) Contributing financial support; and

(v) Hiring qualified YouthBuild graduates.

(3) The workforce investment system which may include:

(i) State and Local Workforce Development Boards;

(ii) State workforce agencies; and

(iii) One-stop career centers and their cooperating partners.

(4) The juvenile and adult justice systems, and the extent to which they provide:

(i) Support and guidance for YouthBuild participants with court involvement;

(ii) Assistance in the reporting of recidivism rates among YouthBuild participants; and

(iii) Referrals of eligible participants through diversion or reentry from incarceration.

(5) Faith-based and community organizations, and the extent to which they provide a variety of grant services such as:

(i) Case management;

(ii) Mentoring;

(iii) English as a Second Language courses; and

(iv) Other comprehensive supportive services, when appropriate.

(j) The applicant's potential to serve different regions, including rural areas and States

that may not have previously received grants for YouthBuild programs; and

(k) Such other factors as the Secretary determines to be appropriate for purposes of evaluating an applicant's potential to carry out the proposed program in an effective and efficient manner.

(l) The weight to be given to these factors will be described in the FOA issued under § 688.210.

§ 688.230 What are the minimum requirements to apply for YouthBuild funds?

At minimum, applications for YouthBuild funds must include the following elements:

(a) Labor market information for the relevant labor market area, including both current data (as of the date of submission of the application) and projections on career opportunities in construction and in-demand industry sectors or occupations;

(b) A request for the grant, specifying the amount of the grant requested and its proposed

uses;

(c)) A description of the applicant and a statement of its qualifications, including a description of the applicant's relationship with Local Boards, one-stop operators, local unions, entities carrying out registered apprenticeship programs, other community groups, and employers, and the applicant's past experience, with rehabilitation or construction of housing or public facilities (including experience with HUD's Section 3 of the Housing and Urban Development Act of 1968

(12 U.S.C. 1701u), and with youth education and employment training programs;

(d) A description of the proposed site for the proposed program;

(e)) A description of the educational and job training activities, work opportunities, post-secondary education and training opportunities, and other services that will be provided to participants, and how those activities, opportunities and services will prepare youth for employment in in-demand industry sectors or occupations in the labor market area described in paragraph (a) of this section;

(1) A description of the proposed activities to be undertaken under the grant related to rehabilitation or construction, and, in the case of an applicant requesting approval from the Secretary to carry out additional activities related to in-demand industry sectors or occupations, a description of such additional activities.

(2) The anticipated schedule for carrying out all activities proposed under paragraph (f) of this section;

(f)) A description of the manner in which eligible youth will be recruited and selected as

participants, including a description of arrangements that will be made with Local Boards, one-

stop operators, faith and community-based organizations, State educational agencies or local education agencies (including agencies of Indian tribes), public assistance agencies, the courts of jurisdictions, agencies that serve youth who are homeless individuals (including those that operate shelters), foster care agencies, and other appropriate public and private agencies;

(g) A description of the special outreach efforts that will be undertaken to recruit eligible young women (including young women with dependent children) as participants;

(h) A description of the specific role of employers in the proposed program, such as their role in developing the proposed program and assisting in service provision and placement activities;

(i) A description of how the proposed program will be coordinated with other Federal, State, and local activities conducted by Indian tribes, such as workforce investment activities, career and technical education and training programs, adult and language instruction educational programs, activities conducted by public schools, activities conducted by community colleges, national service programs, and other job training provided with funds available under WIOA, in particular how programs will coordinate with local Workforce Development funds outlined in WIOA sec. 129(c)(2).

(j) Assurances that there will be a sufficient number of adequately trained supervisory personnel in the proposed program;

(k) A description of the level of performance to be achieved with respect to primary indicators of performance for eligible youth as described in § 688.410;

(l) The organization's past performance under a grant issued by the Secretary to operate a YouthBuild program;

(m) A description of the applicant's relationship with local building trade unions regarding their involvement in training to be provided through the proposed program, the relationship of the proposed program to established registered apprenticeship programs and employers, the ability of the applicant to grant an industry-recognized certificate or certification through the program, and the quality of the program leading to the certificate or certification;

(n) A description of activities that will be undertaken to develop leadership skills of participants;

(o) A detailed budget and description of the system of fiscal controls, and auditing and accounting procedures, that will be used to ensure fiscal soundness for the proposed program;

(p) A description of the commitments for any additional resources (in addition to funds made available through the grant) to be made available to the proposed program from:

(1) The applicant;

(2) Recipients of other Federal, State, or local housing and community development assistance that will sponsor any part of the rehabilitation or construction, operation or maintenance, or other housing and community development activities undertaken as part of the proposed program; or

(3) Entities carrying out other Federal, State or local activities conducted by Indian tribes, including career and technical education and training programs, and job training provided with funds under WIOA.

(q) Information identifying, and a description of, the financing proposed for any:

(1) Rehabilitation of the property involved;

(2) Acquisition of the property; or

(3) Construction of the property;

(r) Information identifying, and a description, of the entity that will manage and operate the property;

(s) Information identifying, and a description of, the data collection systems to be used;

(t) A certification, by a public official responsible for the housing strategy for the State or unit of general local government within which the proposed program is located, that the proposed program is consistent with the housing strategy; and

(u) A certification that the applicant will comply with requirements of the Fair Housing Act (42 U.S.C. 3601 et seq.) and will affirmatively further fair housing.

(v) Any additional requirements that the Secretary determines are appropriate.

§ 688.240 How are eligible entities notified of approval for grant funds?

The Secretary will, to the extent practicable, notify each eligible entity applying for funds no later than 5 months from the date the application is received, whether the application is approved or disapproved. In the event additional funds become available, ETA reserves the right to use such funds to select additional grantees from applications submitted in response to a FOA.

Subpart C—Program Requirements

§ 688.300 Who is an eligible participant?

(a) Eligibility criteria. Except as provided in paragraph (b) of this section, an individual is eligible to participate in a YouthBuild program if the individual is:

(1) Not less than age 16 and not more than age 24 on the date of enrollment; and

(2) A school dropout or an individual who has dropped out of school and has subsequently reenrolled; and

(3) Is one or more of the following:

(i) A member of a low-income family;

(ii) A youth in foster care;

(iii) An offender;

(iv) A youth who is an individual with a disability;

(v) The child of a current or formerly incarcerated parent; or

(vi) A migrant youth.

(b) Exceptions. Not more than 25 percent of the participants in a program, under this section, may be individuals who do not meet the requirements of paragraph (a)(2) or (3) of this section, if such individuals:

(1) Are basic skills deficient, as defined in § 688.120, despite attainment of a secondary school diploma or its recognized State equivalent (including recognized certificates of attendance or similar documents for individuals with disabilities); or

(2) Have been referred by a local secondary school for participation in a YouthBuild program leading to the attainment of a secondary school diploma if such referral is to a YouthBuild program offering a secondary school diploma.

§ 688.310 Are there special rules that apply to veterans?

Special rules for determining income for veterans are found in 20 CFR 683.230 and for the priority of service provisions for qualified persons are found in 20 CFR part 1010. Those special rules apply to covered persons who are eligible to participate in the YouthBuild program.

§ 688.320 What eligible activities may be funded under the YouthBuild program?

Grantees may provide one or more of the following education and workforce investment and other activities to YouthBuild participants—

(a) Eligible education and workforce activities including:

(1) Work experience and skills training (coordinated, to the maximum extent feasible, with registered apprenticeship programs), including:

(i) Supervision and training for participants in the rehabilitation or construction of housing, including residential housing for homeless individuals or low-income families, or transitional housing for homeless individuals and in additional in-demand industry sectors or occupations in the region in which the program operates (as approved by the Secretary);

(ii) Supervision and training for participants in the rehabilitation or construction of community and other public facilities, except that not more than 15 percent of grant funds appropriated to carry out this section may be used for this activity; and

(iii) Supervision and training for participants in in-demand industry sectors or occupations in the region in which the program operates, if such activity is approved by the Secretary.

(2) Occupational skills training;

(3) Other paid and unpaid work experiences, including internships and job shadowing;

(4) Services and activities designed to meet the educational needs of participants, including:

(i) Basic skills instruction and remedial education;

(ii) Language instruction educational programs for participants who are English language learners;

(iii) Secondary education services and activities, including tutoring, study skills training, and school dropout prevention and recovery activities, designed to lead to the attainment of a secondary school diploma or its recognized equivalent (including recognized certificates of attendance or similar document for individuals with disabilities);

(iv) Counseling and assistance in obtaining post-secondary education and required financial aid and;

(v) Alternative secondary school services;

(5) Counseling services and related activities, such as comprehensive guidance and

counseling on drug and alcohol abuse; referrals to mental health services, and referrals to victim services;

(6) Activities designed to develop employment and leadership skills, which may include community service and peer-centered activities encouraging responsibility and other positive social behaviors, and activities related to youth policy committees that participate in decision- making related to the program;

(7)(i) Supportive services and needs-based payments necessary to enable individuals to participate in the program and to assist individuals for a period of time not to exceed 12 months after the completion of training, in obtaining or retaining employment or applying for and transitioning to post-secondary education or training.

(ii) To provide needs-based payments, a grantee must have a written policy which:

(A) Establishes participant eligibility for such payments;

(B) Establishes the amounts to be provided;

(C) Describes the required documentation and criteria for payments, and

(D) Is applied consistently to all program participants.

(8) Job search and assistance.

(b) Payment of the administrative costs of the applicant, including recruitment and selection of participants, except that not more than 10 percent of the amount awarded under § 688.210 may be used for such costs.

(c) Adult mentoring.

(d) Provision of wages, stipends, or benefits to participants in the program; –

(e) Ongoing training and technical assistance that is related to developing and carrying out the program, and;

(f) Follow-up services.

§ 688.330 What level of training qualifies a construction project as a qualifying work site

under the YouthBuild program?

At a minimum, in order to qualify as a work site for the purposes of the YouthBuild

program, a work site must:

(a)) Provide participants with the opportunity to have hands-on training and experience in two or more modules in a construction skills training program that offers an industry-recognized credential;

(b) Be built or renovated for low-income individuals or families;

(c)) Provide substantial hands-on experience for youth;

(d) Have a restrictive covenant in place that only allows for rental or resale to low-income participants as required by § 688.730.

(e) Adhere to the allowable construction and other capital asset costs applicable to the YouthBuild program.

§ 688.340 What timeframes apply to participation?

An eligible individual selected for participation in the program must be offered full-time participation in the program for not less than 6 months and not more than 24 months.

§ 688.350 What timeframes must be devoted to education and workforce investment or

other activities?

YouthBuild grantees must structure programs so that participants in the program are offered:

(a) Education and related services and activities designed to meet educational needs, such as those specified in § 688.320(a)(4) through (7), during at least 50 percent of the time during which they participate in the program; and

(b) Workforce and skills development activities, such as those specified in § 688.320(a)(1) through (3), during at least 40 percent of the time during which they participate in the program.

(c) The remaining 10 percent of the time of participation can be used for the activities described in paragraphs (a) and (b) of this section and/or for leadership development and community service activities.

§ 688.360 What timeframes apply to follow-up services?

Grantees must provide follow-up services to all YouthBuild participants for a period of 12 months after a participant successfully exits a YouthBuild program.

§ 688.370 What are the requirements for exit from the YouthBuild program?

At a minimum, to be a successful exit, the Department of Labor requires that:

(a)) Participants receive hands-on construction training or hands-on training in another industry or occupation, in the case of Construction Plus grantees;

(b) Participants meet the exit policies established by the grantee.

(1) Such policy must describe the program outcomes and/or individual goals that must be met by participants in order to successfully complete the program; and

(2) Grantees must apply the policy consistently to determine when successful exit has occurred.

§ 688.380 What is the role of the YouthBuild grantee in the one-stop system?

In those local workforce investment areas where the grantee operates its YouthBuild program, the grantee is a required partner of the local one-stop delivery system and is subject to the provisions relating to such partners described in 20 CFR part 678.

Subpart D—Performance Indicators

§ 688.400 What are the performance indicators for YouthBuild grants?

(a) The percentage of program participants who are in education and training activities, or in unsubsidized employment, during the second quarter after exit from the program;

(b) The percentage of program participants who are in education or training activities, or in unsubsidized employment, during the fourth quarter after exit from the program;

(c) The median earnings of program participants who are in unsubsidized employment during the second quarter after exit from the program;

(d) The percentage of program participants who obtain a recognized post-secondary credential or secondary school diploma or its recognized equivalent (and for those achieving the secondary diploma or its recognized equivalent, such participants have also obtained or retained employment or are in an education or training program leading to a recognized post-secondary credential within 1 year after exit from the program);

(e) The percentage of program participants, who during a program year, are in an education and training program that leads to a recognized post-secondary credential or employment and who are achieving measurable skill gains toward such a credential or employment;

(f) The indicator of effectiveness in serving employers described at § 676.155(d)(6); and

(g) Other indicators of performance as may be required by the Secretary.

§ 688.410 What are the required levels of performance for the performance indicators?

(a) The Secretary must annually establish expected levels of performance for YouthBuild programs relating to each of the primary indicators of performance. The expected levels of

performance for each of the common performance indicators are national standards that are provided in separately issued guidance. Short-term or other performance indicators will be provided in separately issued guidance or as part of the FOA or grant agreement. Performance level expectations will be based on available YouthBuild data and data from similar WIOA youth programs and may change between grant competitions. The expected national levels of performance will take into account the extent to which the levels promote continuous improvement in performance.

(b) The levels of performance established will, at a minimum:

(1) Be expressed in an objective, quantifiable, and measurable form; and

(2) Indicate continuous improvement in performance.

§ 688.420 What are the reporting requirements for YouthBuild grantees?

Each grantee must provide such reports as are required by the Secretary in separately issued guidance, including:

(a) The quarterly performance report;

(b) The quarterly narrative progress report;

(c) The financial report; and

(d) Such other reports as may be required by the grant agreement.

§ 688.430 What are the due dates for quarterly reporting?

(a) Quarterly reports are due no later than 45 days after the end of the reporting quarter, unless otherwise specified in the reporting guidance issued under § 688.420; and

(b) A final financial report is required 90 days after the expiration of a funding period or the termination of grant support.

Subpart E—Administrative Rules, Costs, and Limitations

§ 688.500 What administrative regulations apply to the YouthBuild program?

Each YouthBuild grantee must comply with the following:

(a) The regulations found in this part.

(b) The general administrative requirements found in 20 CFR part 683, except those that apply only to the WIOA title I-B program and those that have been modified by this section.

(c) The Department's regulations on government-wide requirements, which include:

(1) The regulations codifying the Office of Management and Budget's government-wide grants requirements at 2 CFR 200 and 2900, as applicable;

(2) The Department's regulations at 29 CFR part 37, which implement the nondiscrimination provisions of WIA sec. 188;

(3) The Department's regulations at 29 CFR parts 93, 94, and 98 relating to restrictions on lobbying, drug free workplace, and debarment and suspension; and

(4) The audit requirements of the Office of Management and Budget at 2 CFR 200 and 2900, as applicable.

(d) Relevant State and local educational standards.

§ 688.510 How may grantees provide services under the YouthBuild program?

Each recipient of a grant under the YouthBuild program may provide the services and activities described in these regulations either directly or through subgrants, contracts, or other arrangements with local educational agencies, post-secondary educational institutions, State or local housing development agencies, other public agencies, including agencies of Indian tribes, or private organizations.

§ 688.520 What cost limits apply to the use of YouthBuild program funds?

(a) Administrative costs for programs operated under YouthBuild are limited to 10 percent of the grant award. The definition of administrative costs can be found in 20 CFR 683.215.

(b) The cost of supervision and training for participants involved in the rehabilitation or construction of community and other public facilities is limited to no more than 10 percent of the grant award.

§ 688.530 What are the cost-sharing or matching requirements of the YouthBuild

program?

(a) In addition to the rules described in paragraphs (b) through (f) of this section, the cost-sharing or matching requirements applicable to a YouthBuild grant will be addressed in the grant agreement.

(b) The value of construction materials used in the YouthBuild program is an allowable cost for the purposes of the required non-Federal share or match.

(c) The value of land acquired for the YouthBuild program is not an allowable cost-sharing or match.

(d) Federal funds may not be used as cost-sharing or match resources except as provided

by Federal law.

(e) The value of buildings acquired for the YouthBuild program is an allowable match, provided that the following conditions apply:

(1) The purchase cost of buildings used solely for training purposes is allowable; and

(2) For buildings used for training and other purposes, the allowable amount is determined based on the proportionate share of the purchase price related to direct training activities.

(f) Grantees must follow the requirements of 2 CFR parts 200 and 2900 in the accounting, valuation, and reporting of the required non-Federal share.

§ 688.540 What are considered to be leveraged funds?

(a) Leveraged funds may be used to support allowable YouthBuild program activities and consist of payments made for allowable costs funded by both non-YouthBuild Federal, and non-Federal, resources which include:

(1) Costs which meet the criteria for cost-sharing or match in § 688.530 and are in excess of the amount of cost-sharing or match resources required;

(2) Costs which would meet the criteria in § 688.530 except that they are paid for with other Federal resources; and

(3) Costs which benefit the grant program and are otherwise allowable under the cost principles but are not allowable under the grant because of some statutory, regulatory, or grant provision, whether paid for with Federal or non-Federal resources.

(b) The use of leveraged funds must be reported in accordance with Departmental instructions.

§ 688.550 How are the costs associated with real property treated in the YouthBuild

program?

(a) As provided in paragraphs (b) and (c) of this section, the costs of the following activities associated with real property are allowable solely for the purpose of training YouthBuild participants:

(1) Rehabilitation of existing structures for use by homeless individuals and families or low-income families or for use as transitional housing.

(2) Construction of buildings for use by homeless individuals and families or low-income families or for use as transitional housing.

(3) Construction or rehabilitation of community or other public facilities, except, as provided in § 688.520(b), only 15 percent of the grant award is allowable for such construction and rehabilitation.

(b) The costs for acquisition of buildings that are used for activities described in paragraph (a) of this section are allowable with prior grant officer approval and only under the following

conditions:

(1) The purchase cost of buildings used solely for training purposes is allowable; and

(2) For buildings used for training and other purposes, the allowable amount is determined based on the proportionate share of the purchase cost related to direct training.

(c) The following costs are allowable to the extent allocable to training YouthBuild participants in the construction and rehabilitation activities specified in paragraph (a) of this section:

(1) Trainees' tools and clothing including personal protective equipment (PPE);

(2) On-site trainee supervisors;

(3) Construction management;

(4) Relocation of buildings; and

(5) Clearance and demolition.

(d) Architectural fees, or a proportionate share thereof, are allowable when such fees can be related to items such as architectural plans or blueprints on which participants will be trained.

(e) The following costs are unallowable:

(1) The costs of acquisition of land.

(2) Brokerage fees.

§ 688.560 What participant costs are allowable under the YouthBuild program?

Allowable participant costs include:

(a) The costs of payments to participants engaged in eligible work-related YouthBuild activities.

(b) The costs of payments provided to participants engaged in non-work- related YouthBuild activities.

(c) The costs of needs-based payments.

(d) The costs of supportive services.

(e) The costs of providing additional benefits to participants or individuals who have exited the program and are receiving follow-up services, which may include:

(1) Tuition assistance for obtaining college education credits;

(2) Scholarships to an apprenticeship, technical, or secondary education program; and

(3) Sponsored health programs.

§ 688.570 Does the Department allow incentive payments in the YouthBuild program?

(a)) Grantees are permitted to provide incentive payments to youth participants for recognition and achievement directly tied to training activities and work experiences. Grantees must tie the incentive payments to the goals of the specific grant program and outline such goals in writing prior to starting the program that makes incentive payments.

(b) Prior to providing incentive payments the organization must have written policies and procedures in place governing the awarding of incentives and the incentives provided under the grant must align with these organizational policies.

(c) All incentive payments must comply with the requirements in 2 CFR 200.

§ 688.580 What effect do payments to YouthBuild participants have on eligibility for other

Federal needs-based benefits?

Under 20 CFR 683.275(c), the Department does not consider allowances, earnings, and payments to individuals participating in programs under title I of WIOA as income for purposes of determining eligibility for and the amount of income transfer and in-kind aid furnished under any Federal or Federally-assisted program based on need other than as provided under the Social Security Act (42 U.S.C. 301).

§ 688.590 What program income requirements apply under the YouthBuild program?

(a) Except as provided in paragraph (b) of this section, program income requirements, as specified in the applicable Uniform Administrative Requirements at 2 CFR parts 200 and 2900, apply to YouthBuild grants.

(b) Revenue from the sale of buildings rehabilitated or constructed under the YouthBuild program to homeless individuals and families and low-income families is not considered program income. Grantees are encouraged to use that revenue for the long-term sustainability of the YouthBuild program.

§ 688.600 Are YouthBuild programs subject to the Davis-Bacon Act labor standards?

(a) YouthBuild programs and grantees are subject to Davis-Bacon labor standards requirements under the circumstances set forth in paragraph (b) of this section. In those instances where a grantee is subject to Davis-Bacon requirements, the grantee must follow applicable requirements in the Department's regulations at 29 CFR parts 1, 3, and 5, including the requirements contained in the Davis-Bacon contract provisions set forth in 29 CFR 5.5.

(b) YouthBuild participants are subject to Davis-Bacon Act labor standards when they perform Davis-Bacon-covered laborer or mechanic work, defined at 29 CFR 5.2(m), on Federal or Federally-assisted projects that are subject to the Davis-Bacon Act labor standards. The Davis-Bacon prevailing wage requirements apply to hours worked on the site of the work.

(c) YouthBuild participants who are not registered and participating in a training program approved by the Employment and Training Administration must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

§ 688.610 What are the recordkeeping requirements for YouthBuild programs?

(a)) Grantees must follow the recordkeeping requirements specified in the Uniform Administrative Requirements, at 29 CFR 95.53 and 29 CFR 97.42, as appropriate.

(b) Grantees must maintain such additional records related to the use of buildings constructed or rehabilitated with YouthBuild funds as specified in the grant agreement or in the Department's guidance.

Subpart F—Additional Requirements

§ 688.700 What are the safety requirements for the YouthBuild program?

(a) YouthBuild Grantees must comply with 20 CFR 683.280, which applies Federal and State health and safety standards to the working conditions under WIOA-funded projects and programs. These health and safety standards include "hazardous orders" governing child labor at 29 CFR part 570.

(b) YouthBuild grantees are required to:

(1) Provide comprehensive safety training for youth working on YouthBuild construction projects;

(2) Have written, jobsite-specific safety plans overseen by an on-site supervisor with authority to enforce safety procedures;

(3) Provide necessary personal protective equipment to youth working on YouthBuild projects; and

(4) Submit required injury incident reports.

§ 688.710 What are the reporting requirements for youth safety?

YouthBuild grantees must ensure that YouthBuild program sites comply with the Occupational Safety and Health Administration's (OSHA) reporting requirements in 29 CFR part 1904. A YouthBuild grantee is responsible for sending a copy of OSHA's injury incident report form, to U.S. Department of Labor, Employment and Training Administration within 7 days of any reportable injury suffered by a YouthBuild participant. The injury incident report form is available from OSHA and can be downloaded at http://www.osha.gov/recordkeeping/RKforms.html. Reportable injuries include those that result in death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, or loss of consciousness.

§ 688.720 What environmental protection laws apply to the YouthBuild program?

YouthBuild Program grantees are required, where applicable, to comply with all environmental protection statutes and regulations.

§ 688.730 What requirements apply to YouthBuild housing?

(a) YouthBuild grantees must ensure that all residential housing units which are constructed or rehabilitated using YouthBuild funds must be available solely for:

(1) Sale to homeless individuals and families or low-income families;

(2) Rental by homeless individuals and families or low-income families;

(3) Use as transitional or permanent housing for the purpose of assisting in the movement of homeless individuals and families to independent living. In the case of transitional housing, the unit(s) must be occupied no more than 24 months by the same individual(s); or

(4) Rehabilitation of homes for low-income homeowners.

(b) For rentals of residential units located on the property which are constructed or rehabilitated using YouthBuild funds:

(1) The property must maintain at least a 90 percent level of occupancy for low-income families. The income test will be conducted only at the time of entry for each available unit or rehabilitation of occupant-owned home. If the grantee cannot find a qualifying tenant to lease the unit, the unit may be leased to a family whose income is above the income threshold to qualify as a low-income family but below the median income for the area. Leases for tenants with higher incomes will be limited to not more than 2 years. The leases provided to tenants with higher incomes are not subject to the termination clause that is described in paragraph (b)(2) of this section.

(2) The property owner must not terminate the tenancy or refuse to renew the lease of a

tenant occupying a residential rental housing unit constructed or rehabilitated using YouthBuild

funds except for serious or repeated violations of the terms and conditions of the lease, for violation of applicable Federal, State or local laws, or for good cause. Any termination or refusal to renew the lease must be preceded by not less than a 30-day written notice to the tenant specifying the grounds

for the action. The property owner may waive the written notice requirement for termination in dangerous or egregious situations involving the tenant.

(c) All transitional or permanent housing for homeless individuals or families or low-income families must be safe and sanitary. The housing must meet all applicable State and local housing codes and licensing requirements in the jurisdiction in which the housing is located.

(d) For sales or rentals of residential housing units constructed or rehabilitated using YouthBuild funds, YouthBuild grantees must ensure that owners of the property record a restrictive covenant at the time that an occupancy permit is issued against such property which includes the use restrictions set forth in paragraphs (a), (b), and (c) of this section and incorporates the following definitions at § 688.120: Homeless Individual; Low-Income Housing; and Transitional Housing. The term of the restrictive covenant must be at least 5 years from the time of the issuance of the occupancy permit, unless a time period of more than 5 years has been established by the grantee. Any additional stipulations imposed by a grantee or property owner should be clearly stated in the covenant.

(e) Any conveyance document prepared in the 5-year period of the restrictive covenant must inform the buyer of the property that all residential housing units constructed or rehabilitated using YouthBuild funds are subject to the restrictions set forth in paragraphs (a) through (d) of this section.

PART 651 – GENERAL PROVISIONS GOVERNING THE FEDERAL-STATE EMPLOYMENT SERVICE SYSTEM

16. Revise the authority citation for part 651 to read as follows:

Authority: Wagner-Peyser Act sec. 49a, as amended by Pub. L. 113-128 sec. 302; 38 U.S.C. part III, 4101, 4211; Secs. 503, 3, 189, Pub. L. 113-128, 128 Stat. 1425 (Jul. 22, 2014).

17. Revise § 651.10 to read as follows:

§ 651.10 Definitions of terms used in parts 651, 652, 653, and 658.

Act means the Wagner-Peyser Act (codified at 29 U.S.C. 49 et seq.).

Administrator, Office of Workforce Investment (OWI Administrator) means the chief official of the Office of Workforce Investment (OWI) or the Administrator's designee.

Affirmative action means positive, result-oriented action imposed on or assumed by an employer pursuant to legislation, court order, consent decree, directive of a fair employment practice authority, government contract, grant or loan, or voluntary affirmative action plan adopted pursuant to the affirmative action guidelines of the Equal Employment Opportunity Commission (see 29 CFR part 1608) to provide equal employment opportunities for members of a specified group which for reasons of past custom, historical practice, or other non- occupationally valid purposes has been

discouraged from entering certain occupational fields.

Agricultural worker see Farmworker.

Applicant Holding Office means an employment service office that is in receipt of a clearance order and has access to U.S.-based workers who may be willing and available to perform farmwork on a less than year-round basis.

Applicant Holding State means a State Workforce Agency that is in receipt of a clearance order from another State and potentially has U.S.-based workers who may be willing and available to perform farmwork on a less than year-round basis.

Bona Fide Occupational Qualification (BFOQ) means that an employment decision or request based on age, sex, national origin or religion is based on a finding that such characteristic is necessary to the individual's ability to perform the job in question. Since a BFOQ is an exception to the general prohibition against discrimination on the basis of age, sex, national origin or religion, it must be interpreted narrowly in accordance with the Equal Employment Opportunity Commission regulations set forth at 29 CFR parts 1604, 1605, and 1627.

Career Services means the services described in sec. 134(b)(2) of WIOA and 20 CFR

678.430.

Clearance Order means a job order that is processed through the clearance system under the Agricultural Recruitment System (ARS).

Clearance System means the orderly movement of job seekers as they are referred through the employment placement process by an employment service office. This includes joint action of local employment service offices in different labor market areas and/or States.

Complainant means the individual, employer, organization, association, or other entity filing a complaint.

Complaint means a representation made or referred to a State or employment service office of an alleged violation of the employment service regulations and/or other Federal laws enforced by DOL's Wage and Hour Division (WHD) or Occupational Safety and Health Administration (OSHA), as well as other Federal, State, or local agencies enforcing

employment-related law.

Decertification means the rescission by the Secretary of the year-end certification made under sec. 7 of the Wagner-Peyser Act to the Secretary of the Treasury that the State agency may receive funds authorized by the Wagner-Peyser Act.

Department or DOL means the United States Department of Labor, including its agencies and organizational units.

Employer means a person, firm, corporation or other association or organization which currently has a location within the United States to which U.S. workers may be referred for employment, and which proposes to employ a worker at a place within the United States and which has an employer relationship with respect to employees under this subpart as indicated by the fact that it hires, pays, fires, supervises and otherwise controls the work of such employees. An association of employers is considered an employer if it has all of the indicia of an employer set forth in this definition. Such an association, however, is considered as a joint employer with the employer member if either shares in exercising one or more of the definitional indicia.

Employment and Training Administration (ETA) means the component of the

Department of Labor that administers Federal government job training and worker dislocation programs, Federal grants to States for public employment service programs, and unemployment insurance benefits. These services are primarily provided through State and local workforce development systems.

Employment-related laws means those laws enforced by DOL's Wage and Hour Division (WHD), Occupational Safety and Health Administration (OSHA), or by other Federal, State, or local agencies enforcing employment-related laws.

Employment Service (ES) means the national system of public employment service offices described under the Wagner-Peyser Act. The employment services are delivered through a nationwide system of one-stop centers, and are managed by State agencies and the various offices of the State agencies, and funded by the United States Department of Labor.

Employment Service Office means a local office of a State Workforce Agency (SWA).

Employment Service regulations means the Federal regulations at 20 CFR parts 651, 652, 653, 654, 658, and 29 CFR part 75.

Establishment means a public or private economic employing unit generally at a single

physical location which produces and/or sells goods or services, for example, a mine, factory, store, farm, orchard or ranch. It is usually engaged in one, or predominantly one, type of commercial or governmental activity. Each branch or subsidiary unit of a large employer in a geographical area or community should be considered an individual establishment, except that all such units in the same physical location is considered a single establishment. A component of an establishment which may not be located in the same physical structure (such as the warehouse of a department store) should also be considered as part of the parent establishment. For the purpose of the "seasonal farmworker" definition, farm labor contractors and crew leaders are not considered establishments; it is the organizations to which they supply the workers that are the establishments.

Farmwork means the cultivation and tillage of the soil, dairying, the production,

cultivation, growing, and harvesting of any agricultural or horticultural commodities. This includes the raising of livestock, bees, fur-bearing animals, or poultry, the farming of fish, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market. It also

includes the handling, planting, drying, packing, packaging, processing, freezing, or grading

prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state. For the purpose of this section, agricultural commodities means all commodities produced on a farm including crude gum (oleoresin) from a living tree products processed by the original producer of the crude gum (oleoresin) from which they are derived, including gum spirits of turpentine and gum rosin. *Farmwork* also means any service or activity covered under 20 CFR

655.103(c) and/or 29 CFR 500.20(e) and any service or activity so identified through official Department guidance such as a Training and Employment Guidance Letter.

Farmworker means an individual employed in farmwork as defined in this section.

Field Checks means random, unannounced appearances by State agency personnel at agricultural worksites to which employment service placements have been made through the intrastate or interstate clearance system to ensure that conditions are as stated on the job order and that the employer is not violating an employment-related law.

Field Visits means appearances by monitor advocates or State agency outreach personnel to the working and living areas of MSFWs. The monitor advocates or outreach personnel must keep records to discuss ES services and other employment-related programs with MSFWs, crew leaders, and employers.

Governor means the chief executive of a State or an outlying area.

Hearing Officer means a Department of Labor Administrative Law Judge, designated to preside at Department administrative hearings.

Interstate clearance order means an agricultural job order for temporary employment

(employment on a less than year-round basis) describing one or more hard-to-fill job openings, which an employment service office uses to request recruitment assistance from other employment service offices in a different State.

Intrastate clearance order means an agricultural job order for temporary employment

(employment on a less than year-round basis) describing one or more hard-to-fill job openings, which an employment service office uses to request recruitment assistance from other employment service offices within the State.

Job development means the process of securing a job interview with a public or private

employer for a specific applicant for whom the employment service office has no suitable opening on file.

Job information means information derived from data compiled in the normal course of

employment service activities from reports, job orders, applications, and the like.

Job opening means a single job opportunity for which the employment service office has

on file a request to select and refer participants.

Job order means the document containing the material terms and conditions of

employment relating to wages, hours, working conditions, worksite and other benefits, submitted by an employer.

Job referral means:

(1) The act of bringing to the attention of an employer an applicant or group of applicants who are available for specific job openings or for a potential job; and

(2) The record of such referral. "Job referral" means the same as "referral to a job."

Labor market area means an economically integrated geographic area within which

individuals can reside and find employment within a reasonable distance or can readily change employment without changing their place of residence. Such an area must be identified in accordance with criteria used by DOL's Bureau of Labor Statistics in defining such areas or

similar criteria established by a Governor.

Local Office Manager means the official in charge of all employment service activities in

a one-stop center.

Local Workforce Development Board means a Local Workforce Development Board established under sec. 107 of WIOA.

Migrant farmworker means a seasonal farmworker (as defined in this section) who travels to the job site so that the farmworker is unable to return to his/her permanent residence within the same day. Full-time students traveling in organized groups rather than with their families are excluded.

Migrant food processing worker see Migrant Farmworker.

MSFW means a migrant farmworker or a seasonal farmworker.

Occupational Information Network (O*NET) system means the online reference database which contains detailed descriptions of U.S. occupations, distinguishing characteristics, classification codes, and information on tasks, knowledge, skills, abilities, and work activities as well as information on interests, work styles, and work values.

One-stop center means a one-stop delivery system described in sec. 121(e)(2) of WIOA.

One-stop delivery system means a one-stop delivery system described in sec. 121(e) of WIOA.

One-stop partner means an entity described in sec. 121(b) of WIOA and 20 CFR 678.400 that is participating in the operation of a one-stop delivery system.

O*NET-SOC means the occupational codes and titles used in the O*NET system, based on and grounded in the Standard Occupational Classification (SOC), which are the titles and codes utilized by Federal statistical agencies to classify workers into occupational categories for the purpose of collecting, calculating, and disseminating data. The SOC system is issued by the Office of Management and Budget and the Department of Labor is authorized to develop additional detailed O*NET occupations within existing SOC categories. The Department uses O*NET-SOC titles and codes for the purposes of collecting descriptive occupational information and for State reporting of data on training, credential attainment, and placement in employment by occupation.

Onsite Review means an appearance by the State monitor advocate and/or Federal staff at an employment service office to monitor the delivery of services and protections afforded by employment service regulations to MSFWs by the State agency and local offices.

Order Holding Office means an employment service office that has accepted a clearance order from an employer seeking U.S.-based workers to perform farmwork on a less than year-round basis through the Agricultural Recruitment System.

Outreach Contact means each MSFW that receives the presentation of information, offering of assistance, or follow-up activity from an outreach worker.

Participant means a person who applies for or is receiving Wagner-Peyser Act employment services.

Placement means the hiring by a public or private employer of an individual referred by the employment service office for a job or an interview, provided that the employment office

completed all of the following steps:

(1) Prepared a job order form prior to referral, except in the case of a job development contact on behalf of a specific applicant;

(2) Made prior arrangements with the employer for the referral of an individual or individuals;

(3) Referred an individual who had not been specifically designated by the employer, except for referrals on agricultural job orders for a specific crew leader or worker;

(4) Verified from a reliable source, preferably the employer, that the individual had entered on a job; and

(5) Appropriately recorded the placement.

Public housing means housing operated by or on behalf of any public agency.

Regional Administrator (RA) means the chief DOL Employment and Training

Administration (ETA) official in each Department regional office.

Respondent means the employer or State agency (including a State agency official) who

is alleged to have committed the violation described in a complaint.

Seasonal farmworker means an individual who is employed, or was employed in the past

12 months, in farmwork (as described in this section) of a seasonal or other temporary nature and is not required to be absent overnight from his/her permanent place of residence. Non-migrant individuals who are full-time students are excluded. Labor is performed on a seasonal basis where, ordinarily, the employment pertains to or is of the kind exclusively performed at certain seasons or periods of the year and which, from its nature, may not be continuous or carried on throughout the year. A worker who moves from one seasonal activity to another, while employed in farmwork, is employed on a seasonal basis even though he/she may continue to be employed during a major portion of the year. A worker is employed on other temporary basis where he/she is employed for a limited time only or his/her performance is contemplated for a particular piece of work, usually of short duration. Generally, employment which is contemplated to continue indefinitely is not temporary.

Secretary means the Secretary of the U.S. Department of Labor or the Secretary's

designee.

Significant MSFW one-stop centers are those designated annually by the Department and

include those employment service offices where MSFWs account for 10 percent or more of annual participants in employment services and those local ES offices which the administrator determines should be included due to special circumstances such as an estimated large number of MSFWs in the service area. In no event may the number of significant MSFW one-stop centers be less than 100 centers on a nationwide basis.

Significant MSFW States are those States designated annually by the Department and must include the 20 States with the highest number of MSFW participants.

Significant multilingual MSFW one-stop centers are those designated annually by the Department and include those significant MSFW employment service offices where 10 percent or more of MSFW participants are estimated to require service provisions in a language(s) other than English unless the administrator determines other one-stop centers also should be included due to special circumstances.

Solicitor means the chief legal officer of the U.S. Department of Labor or the Solicitor's designee.

Standard Metropolitan Statistical Area (SMSA) means a metropolitan area designated by

the Bureau of Census which contains:

(1) At least one city of 50,000 inhabitants or more; or

(2) Twin cities with a combined population of at least 50,000.

State means any of the 50 States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

State Administrator means the chief official of the State Workforce Agency (SWA).

State agency or State Workforce Agency (SWA) means the State employment service agency designated under sec. 4 of the Wagner-Peyser Act.

State hearing official means a State official designated to preside at State administrative

hearings convened to resolve complaints involving ES-regulations pursuant to subpart E of part 658 of this chapter.

State Workforce Development Board (State Board) means the entity within a State appointed by the Governor under sec. 101 of WIOA.

Supply State(s) means a State that potentially has U.S.-based workers who may be recruited for referral through the Agricultural Recruitment System to the area of intended employment in a different State.

Supportive services means services such as transportation, child care, dependent care, housing, needs-related payments, and others, that are necessary to enable an individual to participate in activities authorized under WIOA or the Wagner-Peyser Act.

Training Services means services described in sec. 134(c)(3) of WIOA.

Unemployment Insurance claimant means a person who files a claim for benefits under any State or Federal unemployment compensation law.

United States Employment Service (USES) means the component of the Employment and Training Administration of the Department which was established under the Wagner-Peyser Act of 1933 to promote and develop a national system of public employment service offices.

WIOA means the Workforce Innovation and Opportunity Act of 2014 (codified at 29 U.S.C. 3901 et seq.).

Workforce and Labor Market Information (WLMI) means that body of knowledge pertaining to the socio-economic factors influencing the employment, training, and business decisions in national, State, sub-State, and local labor market areas. These factors, which affect labor demand-supply relationships, worker preparation, and educational program offerings, also define the content of the WLMI programs and system. WLMI includes, but is not limited to:

(1) Employment and unemployment numbers and rates;

(2) Population growth and decline, classified by age, sex, race, and other characteristics;

(3) Short- and long-term industry and occupational employment projections;

(4) Information on business employment dynamics, including the number and nature of business establishments, and share and location of industrial production;

(5) Local employment dynamics, including business turnover rates; new hires, job separations, net job losses;

(6) Job vacancy counts;

(7) Job search information and employment data from the public labor exchange system;

(8) Identification of high growth and high demand industries, occupations, and jobs;

(9) Payroll, earnings, work hours, benefits, unionization, trade disputes, conditions of employment, and retirement;

(10) Emerging occupations and evolving skill demands;

(11) Business skill and hiring requirements;

(12) Workforce characteristics, described by skills, experience, education, competencies,

etc.;

(13) Workforce available in geographic areas;

(14) Regional and local economic development, including job creation through business start-ups and expansions;

(15) Educational programs, training and apprenticeship opportunities;

(16) Trends in industrial and occupational restructuring;

(17) Shifts in consumer demands;

(18) Data contained in governmental or administrative reporting including wage records as identified in 20 CFR 652.301;

(19) Labor market intelligence gained from interaction with businesses, industry or trade associations, education agencies, government entities, and the public; and

(20) Other economic factors.

Workforce and Labor Market Information System (WLMIS) means the system that

collects, analyzes, interprets, and disseminates workforce characteristics and employment-related data, statistics, and information at national, State, and local labor market areas and makes that information available to the public, workforce development system, one-stop partner programs, and the education and economic development communities.

Workforce Development Activity means an activity carried out through a workforce development program as defined in sec. 3 of WIOA.

Working days or business days means those days that the order-holding employment service office is open for public business, for purposes of the Agricultural Recruitment System. Work test means activities designed to ensure that an individual whom a State determines to be eligible for unemployment insurance benefits is able to work, available for work, and actively seeking work in accordance with the State's unemployment compensation law.

18. Revise part 652 to read as follows:

PART 652 – ESTABLISHMENT AND FUNCTIONING OF STATE EMPLOYMENT SERVICES

Subpart A—Employment Service Operations

Sec.

652.1 Introduction.

652.2 Scope and purpose of the employment service system.

652.3 Public labor exchange services system.

652.4 Allotment of funds and grant agreement.

652.5 Services authorized.

652.6 [Reserved].

652.7 [Reserved].

652.8 Administrative provisions.

652.9 Labor disputes.

Subpart B—Services for Veterans

Sec.

652.100 Services for veterans.

Subpart C—Wagner-Peyser Act Services in a One-Stop Delivery System Environment

Sec.

652.200 What is the purpose of this subpart?

652.201 What is the role of the State agency in the one-stop delivery system?

652.202 May local Employment Service Offices exist outside of the one-stop service delivery system?

652.203 Who is responsible for funds authorized under the Act in the workforce investment system?

652.204 Must funds authorized under the Act (the Governor's reserve) flow through the one-stop delivery system?

652.205 May funds authorized under the Act be used to supplement funding for labor exchange programs authorized under separate legislation?

652.206 May a State use funds authorized under the Act to provide applicable “career services,” as defined in the Workforce Innovation and Opportunity Act?

652.207 How does a State meet the requirement for universal access to services provided under the Act?

652.208 How are applicable career services related to the methods of service delivery described in this part?

652.209 What are the requirements under the Act for providing reemployment services and other activities to referred unemployment insurance claimants?

652.210 What are the Act's requirements for administration of the work test, including eligibility assessments, as appropriate, and assistance to unemployment insurance claimants?

652.211 What are State planning requirements under the Act?

652.215 Do any provisions in the Workforce Innovation and Opportunity Act change the requirement that State merit staff employees must deliver services provided under the Act?

652.216 May the one-stop operator provide guidance to State merit staff employees in accordance with the Act?

Subpart D—Workforce and Labor Market Information

Sec.

652.300 What role does the Secretary of Labor have concerning the Workforce and Labor Market Information System?

652.301 What are wage records for purposes of the Wagner-Peyser Act?

652.302 How do the Secretary of Labor's responsibilities described in this part apply to State wage records?

652.303 How do the requirements of part 603 of this chapter apply to wage records?

Authority: Wagner-Peyser Act sec. 15 as amended by Pub. L. 113-128 sec. 308, 29 U.S.C. 49l-2; Pub. L. 113-128 secs. 189, 503.

Subpart A—Employment Service Operations

§ 652.1 Introduction.

These regulations implement the provisions of the Wagner-Peyser Act, known hereafter as the Act, as amended by the Workforce Innovation and Opportunity Act (WIOA), Pub. L. 113-128. Congress intended that the States exercise broad authority in implementing provisions of the Act.

§ 652.2 Scope and purpose of the employment service system.

The basic purpose of the employment service system is to improve the functioning of the nation's labor markets by bringing together individuals who are seeking employment and employers who are seeking workers.

§ 652.3 Public labor exchange services system.

At a minimum, each State must administer a labor exchange system which has the capacity:

(a) To assist jobseekers in finding employment, including promoting their familiarity with the Department's electronic tools;

(b) To assist employers in filling jobs;

(c) To facilitate the match between jobseekers and employers;

(d) To participate in a system for clearing labor between the States, including the use of standardized classification systems issued by the Secretary, under sec. 15 of the Act;

(e) To meet the work test requirements of the State unemployment compensation system;

and

(f)) Provide labor exchange services as identified in § 678.430(a) of this chapter and sec. 134(c)(2)(A)(iv) of WIOA.

§ 652.4 Allotment of funds and grant agreement.

(a) Allotments. The Secretary must provide planning estimates in accordance with sec.

6(b)(5) of the Act. Within 30 days of receipt of planning estimates from the Secretary, the State must

make public the sub-State resource distributions, and describe the process and schedule under which these resources will be issued, planned and committed. This notification must include a description of the procedures by which the public may review and comment on the sub- State distributions, including a process by which the State will resolve any complaints.

(b) Grant agreement. To establish a continuing relationship under the Act, the Governor

and the Secretary must sign a grant agreement, including a statement assuring that the State must comply with the Act and all applicable rules and regulations. Consistent with this agreement and sec. 6 of the Act, State allotments will be obligated through a notification of obligation.

§ 652.5 Services authorized.

The funds allotted to each State under sec. 6 of the Act must be expended consistent with an approved plan under 20 CFR 676.100 through 676.135 and § 652.211. At a minimum, each State must provide the minimum labor exchange elements listed at § 652.3.

§ 652.6 [Reserved].

§ 652.7 [Reserved].

§ 652.8 Administrative provisions.

(a) Administrative requirements. The Employment Security Manual is not applicable to funds appropriated under the Wagner-Peyser Act. Except as provided for in paragraph (f) of this section, administrative requirements and cost principles applicable to grants under this part 652 are as specified in 2 CFR 200 and 2900.

(b) Management systems, reporting and recordkeeping. (1) The State must ensure that financial systems provide fiscal control and accounting procedures sufficient to permit preparation of required reports, and the tracing of funds to a level of expenditure adequate to establish that funds have not been expended in violation of the restrictions on the use of such funds. (sec. 10(a))

(2) The financial management system and the program information system must provide Federally-required records and reports that are uniform in definition, accessible to authorized Federal and State staff, and verifiable for monitoring, reporting, audit and evaluation purposes. (sec. 10(c))

(c) Reports required. (1) Each State must make reports pursuant to instructions issued by the Secretary and in such format as the Secretary prescribes.

(2) The Secretary is authorized to monitor and investigate pursuant to sec. 10 of the Act.

(d) Special administrative and cost provisions. (1) Neither the Department nor the State

is a guarantor of the accuracy or truthfulness of information obtained from employers or applicants in the process of operating a labor exchange activity.

(2) Prior approval authority, as described in various sections of 29 CFR part 97, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, and Office of Management and Budget Circular A-87 (Revised), is delegated to the State except that the Secretary reserves the right to require transfer of title on nonexpendable Automated Data Processing Equipment (ADPE), in accordance with provisions contained in 2 CFR 200 and 2900. The Secretary reserves the right to exercise prior approval authority in other areas, after providing advance notice to the State.

(3) Application for financial assistance and modification requirements must be as specified under this part.

(4) Cost of promotional and informational activities consistent with the provisions of the Act, describing services offered by employment security agencies, job openings, labor market information, and similar items are allowable.

(5) Each State must retain basic documents for the minimum period specified below, consistent with 2 CFR 200 and 2900:

(i) Work application: 3 years.

(ii) Job order: 3 Years.

(6) Payments from the State's Wagner-Peyser allotment made into a State's account in the

Unemployment Trust Fund for the purpose of reducing charges against Reed Act funds (sec. 903(c) of the Social Security Act, as amended (42 U.S.C. 1103(c)) are allowable costs, provided that:

(i) The charges against Reed Act funds were for amounts appropriated, obligated, and expended for the acquisition of automatic data processing installations or for the acquisition or major renovation of State-owned office building; and

(ii) With respect to each acquisition of improvement of property pursuant to paragraph (d)(6)(i) of this section, the payments are accounted for in the State's records as credits against equivalent amounts of Reed Act funds used for administrative expenditures.

(e) Disclosure of information. (1) The State must assure the proper disclosure of

information pursuant to sec. 3(b) of the Act.

(2) The information specified in sec. 3(b) and other sections of the Act, must also be provided to officers or any employee of the Federal government or of a State government lawfully charged with administration of unemployment compensation laws, employment service activities under the Act or other related legislation, but only for purposes reasonably necessary for the proper administration of such laws.

(f) Audits. (1) The State must follow the audit requirements found at 20 CFR 683.210,

except that funds expended pursuant to sec. 7(b) of the Act must be audited annually.

(2) The Comptroller General and the Inspector General of the Department have the authority to conduct audits, evaluations or investigations necessary to meet their responsibilities under sec. 9(b)(1) and 9(b)(2), respectively, of the Act.

(3) The audit, conducted pursuant to paragraph (f)(1) or (2) of this section, must be submitted to the Secretary who will follow the resolution process specified in 20 CFR 667.420 through 667.440.

(g) Sanctions for violation of the Act. (1) The Secretary may impose appropriate

sanctions and corrective actions for violation of the Act, regulations, or State Plan, including the following:

(i) Requiring repayment, for debts owed the government under the grant, from non-Federal funds;

(ii) Offsetting debts arising from the misexpenditure of grant funds, against amounts to which the State is or may be entitled under the Act, provided that debts arising from gross negligence or willful misuse of funds may not be offset against future grants. When the Secretary reduces amounts allotted to the State by the amount of the misexpenditure, the debt must be fully satisfied;

(iii) Determining the amount of Federal cash maintained by the State or a subrecipient in excess of reasonable grant needs, establishing a debt for the amount of such excessive cash, and charging interest on that debt;

(iv) Imposing other appropriate sanctions or corrective actions, except where specifically prohibited by the Act or regulations.

(2) To impose a sanction or corrective action, the Secretary must utilize the initial and final determination procedures outlined in (f)(3) of this section.

(h) Other violations. Violations or alleged violations of the Act, regulations, or grant terms and conditions except those pertaining to audits or discrimination must be determined and handled in accordance with 20 CFR part 658, subpart H.

(i) Fraud and abuse. Any persons having knowledge of fraud, criminal activity or other abuse must report such information directly and immediately to the Secretary. Similarly, all complaints involving such matters should also be reported to the Secretary directly and immediately.

(j) Nondiscrimination and affirmative action requirements. States must:

(1) Assure that no individual be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration or in connection with any services or activities authorized under the Act in violation of any applicable nondiscrimination law, including laws prohibiting discrimination on the basis of age, race, sex, color, religion, national origin, disability, political affiliation or belief. All complaints alleging discrimination must be filed and processed according to the procedures in the applicable DOL nondiscrimination regulations.

(2) Assure that discriminatory job orders will not be accepted, except where the stated requirement is a bona fide occupational qualification (BFOQ). See, generally, 42 U.S.C. 2000(e)-

2(e), 29 CFR parts 1604, 1606, 1625.

(3) Assure that employers' valid affirmative action requests will be accepted and a significant number of qualified applicants from the target group(s) will be included to enable the employer to meet its affirmative action obligations.

(4) Assure that employment testing programs will comply with 41 CFR part 60-3 and 29 CFR part 32 and 29 CFR 1627.3(b)(iv).

(5) Nondiscrimination and equal opportunity requirements and procedures, including complaint processing and compliance reviews, will be governed by the applicable DOL nondiscrimination regulations.

§ 652.9 Labor disputes.

(a)) State agencies may not make a job referral on job orders which will aid directly or indirectly in the filling of a job opening which is vacant because the former occupant is on strike, or is being locked out in the course of a labor dispute, or the filling of which is otherwise an issue in a labor dispute involving a work stoppage.

(b) Written notification must be provided to all applicants referred to jobs not at issue in the labor dispute that a labor dispute exists in the employing establishment and that the job to which the applicant is being referred is not at issue in the dispute.

(c)) When a job order is received from an employer reportedly involved in a labor dispute involving a work stoppage, State agencies must:

(1) Verify the existence of the labor dispute and determine its significance with respect to each vacancy involved in the job order; and

(2) Notify all potentially affected staff concerning the labor dispute.

(d) State agencies must resume full referral services when they have been notified of, and verified with the employer and workers' representative(s), that the labor dispute has been terminated.

(e)) State agencies must notify the regional office in writing of the existence of labor disputes which:

(1) Result in a work stoppage at an establishment involving a significant number of workers; or

(2) Involve multi-establishment employers with other establishments outside the reporting State.

Subpart B—Services for Veterans

§ 652.100 Services for veterans.

Veterans receive priority of service for all DOL-funded employment and training programs as described in 20 CFR part 1010. The Department's Veterans' Employment and Training Service (VETS) administers the Jobs for Veterans State Grants (JVSG) program under chapter 41 of title 38 of the U.S. Code and other activities and training programs which provide services to specific populations of eligible veterans. VETS' general regulations are located in parts 1001, 1002, and

1010 of this title.

Subpart C—Wagner-Peyser Act Services in a One-Stop Delivery System Environment

§ 652.200 What is the purpose of this subpart?

(a) This subpart provides guidance to States to implement the services provided under the Act, as amended by WIOA, in a one-stop delivery system environment.

(b) Except as otherwise provided, the definitions contained in 20 CFR part 651 and sec. 2 of the Act apply to this subpart.

§ 652.201 What is the role of the State agency in the one-stop delivery system?

(a) The role of the State agency in the one-stop delivery system is to ensure the delivery of services authorized under sec. 7(a) of the Act. The State agency is a required one-stop partner in each local one-stop delivery system and is subject to the provisions relating to such partners that are described at 20 CFR part 678.

(b) Consistent with those provisions, the State agency must:

(1) Participate in the one-stop delivery system in accordance with sec. 7(e) of the Act;

(2) Be represented on the Workforce Development Boards that oversee the local and State one-stop delivery system and be a party to the Memorandum of Understanding, described at 20 CFR 678.500, addressing the operation of the one-stop delivery system; and

(3) Provide these services as part of the one-stop delivery system.

§ 652.202 May local Employment Service Offices exist outside of the one-stop service

delivery system?

No. Local Employment Service Offices may not exist outside of the one-stop service delivery system. A State must collocate employment services, as provided in 20 CFR 678.310-678.315.

§ 652.203 Who is responsible for funds authorized under the Act in the workforce

investment system?

The State agency retains responsibility for all funds authorized under the Act, including

those funds authorized under sec. 7(a) required for providing the services and activities delivered as part of the one-stop delivery system.

§ 652.204 Must funds authorized under the Act (the Governor's reserve) flow through the

one-stop delivery system?

No, these funds are reserved for use by the Governor for performance incentives, supporting exemplary models of service delivery, and services for groups with special needs, as described in sec. 7(b) of the Act. However, these funds may flow through the one-stop delivery system.

§ 652.205 May funds authorized under the Act be used to supplement funding for labor

exchange programs authorized under separate legislation?

(a)) Section 7(c) of the Act enables States to use funds authorized under sec. 7(a) or 7(b) of the Act to supplement funding of any workforce activity carried out under WIOA.

(b) Funds authorized under the Act may be used under sec. 7(c) to provide additional funding to other activities authorized under WIOA if:

(1) The activity meets the requirements of the Act, and its own requirements;

(2) The activity serves the same individuals as are served under the Act;

(3) The activity provides services that are coordinated with services under the Act; and

(4) The funds supplement, rather than supplant, funds provided from non-Federal sources.

§ 652.206 May a State use funds authorized under the Act to provide applicable "career

services," as defined in the Workforce Innovation and Opportunity Act?

Yes, funds authorized under sec. 7(a) of the Act must be used to provide basic career services as identified in § 678.430(a) of this chapter and secs. 134(c)(2)(A)(i)-(xi) of WIOA, and may be used to provide individualized career services as identified in § 678.430(b) of this chapter and sec. 134(c)(2)(A)(xii) of WIOA. Funds authorized under sec. 7(b) of the Act may be used to provide career services. Career services must be provided consistent with the requirements of the Wagner-Peyser Act.

§ 652.207 How does a State meet the requirement for universal access to services provided

<u>under the Act</u>?

(a)) A State has discretion in how it meets the requirement for universal access to services provided under the Act. In exercising this discretion, a State must meet the Act's requirements.

(b) These requirements are:

(1) Labor exchange services must be available to all employers and job seekers, including unemployment insurance (UI) claimants, veterans, migrant and seasonal farmworkers, and individuals with disabilities;

(2) The State must have the capacity to deliver labor exchange services to employers and job seekers, as described in the Act, on a statewide basis through:

(i) Self-service, including virtual services;

(ii) Facilitated self-help service; and

(iii) Staff-assisted service;

(3) In each local workforce investment area, in at least one comprehensive physical center, staff funded under the Act must provide labor exchange services (including staff-assisted labor exchange services) and career services as described in § 652.206; and

(4) Those labor exchange services provided under the Act in a local workforce investment

area must be described in the Memorandum of Understanding (MOU) described in § 678.500.

§ 652.208 How are applicable career services related to the methods of service delivery

described in in this part?

Career services may be delivered through any of the applicable three methods of service delivery described in § 652.207(b)(2). These methods are:

(a)) Self-service, including virtual services;

(b) Facilitated self-help service; and

(c)) Staff-assisted service.

§ 652.209 What are the requirements under the Act for providing reemployment services

and other activities to referred unemployment insurance claimants?

(a) In accordance with sec. 3(c)(3) of the Act, the State agency, as part of the one-stop

delivery system, must provide reemployment services to UI claimants for whom such services are required as a condition for receipt of UI benefits. Services must be appropriate to the needs of UI claimants who are referred to reemployment services under any Federal or State UI law.

(b) The State agency must also provide other activities, including:

(1) Coordination of labor exchange services with the provision of UI eligibility services as required by sec. 5(b)(2) of the Act;

(2) Administration of the work test, conducting eligibility assessments, and registering UI claimants for employment services in accordance with a State's unemployment compensation law, and provision of job finding and placement services as required by sec. 3(c)(3) and described in sec. 7(a)(3)(F) of the Act. ;

(3) Referring UI claimants to, and providing application assistance for, training and education resources and programs, including Federal Pell grants and other student assistance under title IV of the Higher Education Act, the Montgomery GI Bill, Post-9/11 GI Bill, and other Veterans Educational Assistance, training provided for youth, and adult and dislocated workers, as well as other employment training programs under WIOA, and for Vocational Rehabilitation Services under title I of the Rehabilitation Act of 1973.

§ 652.210 What are the Act's requirements for administration of the work test, including

eligibility assessments, as appropriate, and assistance to unemployment insurance

claimants?

(a)) State UI law or rules establish the requirements under which UI claimants must register and search for work in order to fulfill the UI work test requirements.

(b) Staff funded under the Act must assure that:

(1) UI claimants receive the full range of labor exchange services available under the Act that are necessary and appropriate to facilitate their earliest return to work, including career services specified in § 652.206 and listed in sec. 134(c)(2)A) of WIOA;

(2) UI claimants requiring assistance in seeking work receive the necessary guidance and counseling to ensure they make a meaningful and realistic work search; and

(3) ES staff will provide UI program staff with information about UI claimants' ability or availability for work, or the suitability of work offered to them.

§ 652.211 What are State planning requirements under the Act?

The Employment Service is a core program identified in WIOA and must be included as part of each State's Unified or Combined State Plans. See §§ 676.105 through 676.125 for planning requirements for the core programs.

§ 652.215 Do any provisions in the Workforce Innovation and Opportunity Act change the

requirement that State merit staff employees must deliver services provided under the Act?

This section stipulates that only State merit staff may provide Wagner-Peyser

services. The only change proposed in this section is to change "WIA" to "WIOA" in the section question; the remainder of the text has not changed from the existing regulation. The Department has followed this policy since the earliest years of the ES, in order to ensure minimum standards for the quality of the services provided. A 1998 U.S. District Court decision, *Michigan v. Herman*, 81 F. Supp. 2nd 840 (http://law.justia.com/cases/federal/district-courts/FSupp2/81/840/2420800/) upheld this policy. State merit staff employees are directly

accountable to State government entities, and the standards for their performance and their determinations on the use of public funds require that decisions be made in the best interest of the public and of the population to be served. State merit staff meet objective professional qualifications and provide impartial, transparent information and services to all customers while complying with established government standards.

§ 652.216 May the one-stop operator provide guidance to State merit staff employees in

accordance with the Act?

Yes, the one-stop delivery system envisions a partnership in which Wagner-Peyser Act labor exchange services are coordinated with other activities provided by other partners in a one-stop setting. As part of the local Memorandum of Understanding described in § 678.500, the State agency, as a one-stop partner, may agree to have staff receive guidance from the one-stop operator regarding the provision of labor exchange services. Personnel matters, including compensation, personnel actions, terms and conditions of employment, performance appraisals, and accountability of State merit staff employees funded under the Act, remain under the authority of the State agency. The guidance given to employees must be consistent with the provisions of the Act, the local Memorandum of Understanding, and applicable collective bargaining agreements.

Subpart D—Workforce and Labor Market Information

§ 652.300 What role does the Secretary of Labor have concerning the Workforce and Labor Market Information System?

(a) The Secretary of Labor must oversee the development, maintenance, and continuous improvement of the workforce and labor market information system defined in Wagner-Peyser Act sec. 15 and 20 CFR 651.10.

(b) With respect to data collection, analysis, and dissemination of workforce and labor market information as defined in Wagner-Peyser Act sec. 15 and 20 CFR 651.10, the Secretary must:

(1) Assign responsibilities within the Department of Labor for elements of the workforce and labor market information system described in sec. 15(a) of the Wagner-Peyser Act to ensure that the statistical and administrative data collected are consistent with appropriate Bureau of Labor Statistics standards and definitions, and that the information is accessible and understandable to users of such data;

(2) Actively seek the cooperation of heads of other Federal agencies to establish and maintain mechanisms for ensuring complementarity and non-duplication in the development and operation of statistical and administrative data collection activities;

(3) Solicit, receive, and evaluate the recommendations of the Workforce Information Advisory Council established by Wagner-Peyser Act sec. 15(d);

(4) Eliminate gaps and duplication in statistical undertakings;

(5) Through the Bureau of Labor Statistics and the Employment and Training Administration, and in collaboration with States, develop and maintain the elements of the workforce and labor market information system, including the development of consistent procedures

and definitions for use by States in collecting and reporting the workforce and labor market information data described in Wagner-Peyser Act sec. 15 and defined in 20 CFR 651.10; and

(6) Establish procedures for the system to ensure that the data and information are timely, and paperwork and reporting for the system are reduced to a minimum.

§ 652.301 What are wage records for purposes of the Wagner-Peyser Act?

Wage records, for purposes of the Wagner-Peyser Act, are records that contain "wage information" as defined in 20 CFR 603.2(k). In this part, "State wage records" refers to wage records produced or maintained by a State.

§ 652.302 How do the Secretary of Labor's responsibilities described in this part apply to

State wage records?

(a)) State wage records, as defined in § 652.301, are source data used in the development of a significant portion of the workforce and labor market information defined in § 651.10.

(b) Based on the Secretary of Labor's responsibilities described in Wagner-Peyser Act sec. 15 and 20 CFR 652.300, the Secretary of Labor will, in consultation with the Workforce Information Advisory Council described in Wagner-Peyser Act sec. 15(d), Federal agencies, and States, develop:

(1) Standardized definitions for the data elements comprising "wage records" as defined in § 652.301; and

(2) Improved processes and systems for the collection and reporting of wage records.

(c) In carrying out these activities, the Secretary may also consult with other stakeholders, such as employers.

§ 652.303 How do the requirements of part 603 of this chapter apply to wage records?

All information collected by the State in wage records referred to in § 652.302 is subject to the confidentiality regulations at 20 CFR part 603.

19. Revise part 653 to read as follows:

PART 653 – SERVICES OF THE EMPLOYMENT SERVICE SYSTEM

Subpart A—[Reserved]

Subpart B—Services for Migrant and Seasonal Farmworkers (MSFWs)

Sec.

653.100 Purpose and scope of subpart.

653.101 Provision of services to migrant and seasonal farmworkers.

653.102 Job information.

653.103 Process for migrant and seasonal farmworkers to participate in workforce development activities.

653.107 Outreach and Agricultural Outreach Plan.

653.108 State Workforce Agency and State monitor advocate responsibilities.

653.109 Data collection and performance accountability measures.

653.110 Disclosure of data.

653.111 State agency staffing requirements.

Subpart C – E [Reserved]

Subpart F—Agricultural Recruitment System for U.S. Farmworkers (ARS)

Sec.

653.500 Purpose and scope of subpart.

653.501 Requirements for processing clearance orders.

653.502 Conditional access to the agricultural recruitment system.

653.503 Field checks.

Authority: Pub. L. 113-128 secs. 167, 189, 503; Wagner-Peyser Act, as amended by Pub. L. 113-128 secs. 302 – 308, 29 U.S.C. 49 et seq.; 38 U.S.C. part III, chapters 41 and 42.

Subpart A—[Reserved]

Subpart B—Services for Migrant and Seasonal Farmworkers (MSFWs)

§ 653.100 Purpose and scope of subpart.

(a) This subpart sets forth the principal regulations of the United States Employment Service (USES) concerning the provision of services for MSFWs consistent with the requirement that all services of the workforce development system be available to all job seekers in an equitable fashion. This includes ensuring that MSFWs have access to these services in a way that meets their unique needs. MSFWs must receive services on a basis which is qualitatively equivalent and quantitatively proportionate to services provided to non-MSFWs.

(b) This subpart contains requirements that State agencies establish a system to monitor their own compliance with USES regulations governing services to MSFWs.

(c)) Special services to ensure that MSFWs receive the full range of employment related services are established under this subpart.

§ 653.101 Provision of services to migrant and seasonal farmworkers.

Each employment service office must offer MSFWs the full range of career and supportive services, benefits and protections, and job and training referral services as are provided to non-MSFWs. In providing such services, the employment service offices must consider and be sensitive to the preferences, needs, and skills of individual MSFWs and the availability of job and training opportunities.

§ 653.102 Job information.

All State agencies must make job order information conspicuous and available to MSFWs by all reasonable means. Such information must, at minimum, be available through internet labor exchange systems and through the one-stop centers. Employment service offices must provide adequate staff assistance to MSFWs to access job order information easily and efficiently. In designated significant MSFW multilingual offices, such assistance must be provided to MSFWs in their native language, whenever requested or necessary.

§ 653.103 Process for migrant and seasonal farmworkers to participate in workforce

development activities.

(a) Each employment service office must determine whether or not participants are

MSFWs as defined at § 651.10 of this chapter.

(b) All State Workforce Agencies (SWAs) will ensure that MSFWs with limited English proficiency (LEP) receive, free of charge, the language assistance necessary to afford them meaningful access to the programs, services, and information offered by the one-stop centers.

(c) Employment service office staff members must provide MSFWs a list of available career and supportive services in their native language.

(d) Employment service staff must refer and/or register MSFWs for services, as appropriate, if the MSFW is interested in obtaining such services.

§ 653.107 Outreach and Agricultural Outreach Plan.

(a) State agency outreach responsibilities. (1) Each State agency must employ an

adequate number of outreach workers to conduct MSFW outreach in their service areas. SWA Administrators must ensure that State monitor advocates and outreach workers coordinate their outreach efforts with WIOA title I sec. 167 grantees as well as with public and private community service agencies and MSFW groups.

(2) As part of their outreach, States agencies:

(i) Should communicate the full range of workforce development services to MSFWs.

(ii) Should, in supply States, conduct thorough outreach efforts with extensive follow-up activities .

(3) For purposes of hiring and assigning staff to conduct outreach duties, and to maintain compliance with State agencies' Affirmative Action programs, State agencies must seek, through merit system procedures, qualified candidates:

(i) Who are from MSFW backgrounds;

(ii) Who speak a language common among MSFWs in the State; and

(4) The 20 States with the highest estimated year-round MSFW activity, as identified in guidance issued by the Secretary, must assign, in accordance with State merit staff requirements, full-time, year-round staff to conduct outreach duties. The remainder of the States must hire year-round part-time outreach staff and, during periods of the highest MSFW activity must hire full-time outreach staff. All outreach staff must be multilingual if warranted by the characteristics of the MSFW population in the State, and must spend a majority of their time in the field.

(5) The State agency must publicize the availability of employment services through such means as newspaper and electronic media publicity. Contacts with public and private community agencies, employers and/or employer organizations, and MSFW groups also must be utilized to

facilitate the widest possible distribution of information concerning employment services.

(b) Outreach worker's responsibilities. Outreach workers must locate and contact

MSFWs who are not being reached by the normal intake activities conducted by the employment service offices. Outreach worker's responsibilities include:

(1) Explaining to MSFWs at their working, living or gathering areas (including day-haul sites), by means of written and oral presentations either spontaneous or recorded, in a language readily understood by them, the following;

(i) The services available at the local one-stop center (which includes the availability of referrals to training, supportive services, and career services, as well as specific employment opportunities), and other related services;

(ii) Information on the employment service complaint system;

(iii) Information on the other organizations serving MSFWs in the area; and

(iv) A basic summary of farmworker rights, including their rights with respect to the terms and conditions of employment;

(2) Outreach workers may not enter an employer's property or work area to perform outreach duties described in this section without permission of the employer, owner, or farm labor contractor, unless otherwise authorized to enter by law. Outreach workers may not enter workers' living areas without the permission of the workers, and must comply with appropriate State laws regarding access.

(3) After making the presentation, outreach workers must urge the MSFWs to go to the local one-stop center to obtain the full range of employment and training services.

(4) If an MSFW cannot or does not wish to visit the local one-stop center, the outreach worker must offer to provide on-site the following:

(i) Assistance in the preparation of applications for employment services;

(ii) Assistance in obtaining referral(s) to current and future employment opportunities;

(iii) Assistance in the preparation of either employment service or employment-related law complaints;

(iv) Referral of complaints to the employment service office complaint specialist or employment service officer manager;

(v) Referral to supportive services and/or career services in which the individual or a family member may be interested; and

(vi) As needed, assistance in making appointments and arranging transportation for individual MSFW(s) or members of his/her family to and from local one-stop centers or other appropriate agencies.

(5) Outreach workers must make follow-up contacts as necessary and appropriate to provide the assistance specified in paragraphs (b)(1) through (b)(4) of this section.

(6) Outreach workers must be alert to observe the working and living conditions of MSFWs

and, upon observation or upon receipt of information regarding a suspected violation of Federal or State employment-related law, document and refer information to the employment service office manager for processing in accordance with § 658.411 of this chapter. Additionally, if an outreach worker observes or receives information about apparent violations (as described in 20 CFR 658.419), the outreach worker must document and refer the information to the appropriate local employment service office manager.

(7) Outreach workers must be trained in local office procedures and in the services, benefits, and protections afforded MSFWs by the employment service system, including training on protecting farmworkers against sexual harassment. They must also be trained in the procedure for informal resolution of complaints. The program for such training must be formulated by the State Administrator, pursuant to uniform guidelines developed by ETA; the State monitor advocate must be given an opportunity to review and comment on the State's program.

(8) Outreach workers must maintain complete records of their contacts with MSFWs and the services they perform. These records must include a daily log, a copy of which must be sent monthly to the employment service office manager and maintained on file for at least 2 years. These records must include the number of contacts, the names of contacts (if available), and the services provided (e.g., whether a complaint was received, whether a request for career services was received, and whether a referral was made). Outreach workers also must maintain records

of each possible violation or complaint of which they have knowledge, and their actions in

ascertaining the facts and referring the matters as provided herein. These records must include a description of the circumstances and names of any employers who have refused outreach workers access to MSFWs pursuant to § 653.107(b)(2).

(9) Outreach workers must not engage in political, unionization or anti-unionization

activities during the performance of their duties.

(10) Outreach workers must be provided with, carry and display, upon request, identification cards or other material identifying them as employees of the State agency.

(c) Employment service office outreach responsibilities. Each employment service office manager must file with the State monitor advocate a monthly summary report of outreach efforts. These reports must summarize information collected, pursuant to paragraph (b)(8) of this section. The employment service office manager and/or other appropriate State office staff members must assess the performance of outreach workers by examining the overall quality and productivity of their work, including the services provided and the methods and tools used to offer services. Performance must not be judged solely by the number of contacts made by the outreach worker. The monthly reports and daily outreach logs must be made available to the State monitor advocate and Federal on-site review teams.

(d) State Agricultural Outreach Plan (AOP). (1) Each State agency must develop an AOP every 4 years as part of the Unified or Combined State Plan required under sec. 102 or 103 of WIOA.

(2) The AOP must:

(i) Provide an assessment of the unique needs of MSFWs in the area based on past and projected agricultural and MSFW activity in the State;

(ii) Provide an assessment of available resources for outreach;

(iii) Describe the State agency's proposed outreach activities including strategies on how to contact MSFWs who are not being reached by the normal intake activities conducted by the employment service offices;

(iv) Describe the activities planned for providing the full range of employment and training services to the agricultural community, both MSFWs and agricultural employers, through the one-stop centers.

(v) Provide an assurance that the State agency is complying with the requirements under

§ 653.111 if the State has significant MSFW one-stop centers.

(3) The AOP must be submitted in accordance with the regulations at 20 CFR 653.107(d) and planning guidance issued by the Department.

(4) The Annual Summaries required at § 653.108(s) must update annually the Department on the State agency's progress toward meetings its goals set forth in the AOP.

§ 653.108 State Workforce Agency and State monitor advocate responsibilities.

(a)) State Administrators must assure that their State agencies monitor their own compliance with ES regulations in serving MSFWs on an ongoing basis. The State Administrator has overall responsibility for State agency self-monitoring.

(b) The State Administrator must appoint a State monitor advocate. The State Administrator must inform farmworker organizations and other organizations with expertise concerning MSFWs of the opening and encourage them to refer qualified applicants to apply through the State merit system prior to appointing a State monitor advocate. Among qualified candidates determined through State merit system procedures, the State agencies must seek persons:

(1) Who are from MSFW backgrounds; and/or

(2) Who speak Spanish or other languages of a significant proportion of the State MSFW population; and/or

(3) Who have substantial work experience in farmworker activities.

(c) The State monitor advocate must have direct, personal access, when necessary, to the State Administrator. The State monitor advocate must have status and compensation as approved by the civil service classification system and be comparable to other State positions assigned similar levels of tasks, complexity, and responsibility.

(d) The State monitor advocates must be assigned staff necessary to fulfill effectively all of their duties as set forth in this subpart. The number of staff positions must be determined by reference to the number of MSFWs in the State, as measured at the time of the peak MSFW population, and the need for monitoring activity in the State. The State monitor advocates must devote full-time to monitor advocate functions. Any State that proposes less than full-time dedication must demonstrate to its Regional Administrator that the State monitor advocate function can be effectively performed with part-time staffing.

(e) All State monitor advocates and their staff must attend, within the first 3 months of their tenure, a training session conducted by the regional monitor advocate. They must also attend whatever additional training sessions are required by the regional or national monitor advocate.

(f) The State monitor advocate must provide any relevant documentation requested from the State agency by the regional monitor advocate.

(g) The State monitor advocate must:

(1) Conduct an ongoing review of the delivery of services and protections afforded by employment service regulations to MSFWs by the State agency and local employment service offices (including progress made in achieving affirmative action staffing goals). The State monitor advocate, without delay, must advise the State agency and local offices of problems, deficiencies, or improper practices in the delivery of services and protections afforded by these regulations and may request a corrective action plan to address these deficiencies. The State monitor advocate must advise the State agency on means to improve the delivery of services.

(2) Participate in on-site reviews on a regular basis, using the following procedures:

(i) Before beginning an onsite review, the State monitor advocate and/or review staff must study:

(A)) Program performance data;

(B)) Reports of previous reviews;

(C) Corrective action plans developed as a result of previous reviews;

(D)) Complaint logs; and

(E)) Complaints elevated from the office or concerning the office.

(ii) Ensure that the onsite review format, developed by ETA, is used as a guideline for onsite reviews.

(iii) Upon completion of an onsite monitoring review, the State monitor advocate must hold one or more wrap-up sessions with the employment service office manager and staff to discuss any findings and offer initial recommendations and appropriate technical assistance.

(iv) After each review the State monitor advocate must conduct an in-depth analysis of the review data. The conclusions and recommendations of the State monitor advocate must be put in writing, and must be sent to the State Administrator, to the official of the State agency with line authority over the employment service office, and other appropriate State agency

officials.

(v) If the review results in any findings of noncompliance with the regulations under this chapter, the employment service office manager must develop and propose a written corrective action plan. The plan must be approved or revised by appropriate superior officials and the State

monitor advocate. The plan must include actions required to correct or to take major steps to correct any compliance issues within 30 days, and if the plan allows for more than 30 days for full compliance, the length of, and the reasons for, the extended period must be specifically stated. State agencies are responsible for assuring and documenting that the employment service office is in compliance within the time period designated in the plan.

(vi) ate agencies must submit to the appropriate ETA regional office copies of the onsite review reports and corrective action plans for employment service offices.

(vii) The State monitor advocate may recommend that the review described in paragraph (g)(2) of this section be delegated to a responsible, professional member of the administrative staff of the State agency, if and when the State Administrator finds such delegation necessary. In such event, the State monitor advocate is responsible for and must approve the written report of the review.

(3) Assure that all significant MSFW one-stop centers not reviewed onsite by Federal staff, are reviewed at least once per year by State staff, and that, if necessary, those employment service offices in which significant problems are revealed by required reports, management information, the employment service complaint system, or other means are reviewed as soon as possible.

(4) Review and approve the State agency's Agricultural Outreach Plan (AOP).

(5) On a random basis, review outreach workers' daily logs and other reports including those showing or reflecting the workers' activities.

(6) Write and submit annual summaries to the State Administrator with a copy to the Regional Administrator as described in paragraph (s) of this section.

(h) The State monitor advocate must participate in Federal reviews conducted pursuant to

20 CFR part 658 subpart G.

(i) At the discretion of the State Administrator, the State monitor advocate may be assigned the responsibility as the complaint specialist. The State monitor advocate must participate in and monitor the performance of the complaint system, as set forth at 20 CFR 658.400 et seq. The State monitor advocate must review the employment service office managers' informal resolution of complaints relating to MSFWs and must ensure that the local employment service office manager transmits copies of the logs of all MSFW complaints pursuant to 20 CFR 658 subpart E to the State agency.

(j) The State monitor advocate must serve as an advocate to improve services for MSFWs.

(k) The State monitor advocate must establish an ongoing liaison with WIOA title I sec. 167 National Farmworker Jobs Program (NFJP) grantees and other organizations serving farmworkers, employers, and employer organizations in the State.

(l) The State monitor advocate must meet (either in person or by alternative means), at minimum, quarterly, with representatives of the organizations pursuant to paragraph (k) of this section, to receive complaints, assist in referrals of alleged violations to enforcement agencies, receive input on improving coordination with employment service offices or improving the coordination of services to MSFWs. To foster such collaboration, a Memorandum of Understanding (MOU) (or multiple MOUs) must be established between the State monitor advocate and the different organizations.

(m) The State monitor advocate must conduct frequent field visits to the working and living areas of MSFWs, and must discuss employment services and other employment-related

programs with MSFWs, crew leaders, and employers. Records must be kept of each such field visit.

(n) The State monitor advocate must participate in the appropriate regional public meeting(s) held by the Department of Labor Regional Farm Labor Coordinated Enforcement Committee, other Occupational Safety and Health Administration and Wage and Hour Division task forces, and other committees as appropriate.

(o) The State monitor advocate must ensure that outreach efforts in all significant MSFW employment service offices are reviewed at least yearly. This review will include accompanying at least one outreach worker from each significant MSFW local office on their field visits to MSFWs' working and living areas. The State monitor advocate must review findings from these reviews with the employment service office managers.

(p) The State monitor advocate must review on at least a quarterly basis all statistical and other MSFW-related data reported by employment service offices in order:

(1) To determine the extent to which the State agency has complied with the employment service regulations; and

(2) To identify the areas of non-compliance.

(q) The State monitor advocate must have full access to all statistical and other MSFW-related information gathered by State agencies and local employment service offices, and may interview State and local employment service office staff with respect to reporting methods. Subsequent to each review, the State monitor advocate must consult, as necessary, with State and local employment service offices and provide technical assistance to ensure accurate reporting.

(r) The State monitor advocate must review and comment on proposed State employment service directives, manuals, and operating instructions relating to MSFWs and must ensure:

(1) That they accurately reflect the requirements of the regulations, and

(2) That they are clear and workable. The State monitor advocate also must explain and make available at the requestor's cost, pertinent directives and procedures to employers, employer organizations, farmworkers, farmworker organizations and other parties expressing an interest in a readily identifiable directive or procedure issued and receive suggestions on how these documents can be improved.

(s) Annual summary. The State monitor advocates must prepare for the State

Administrator, the regional monitor advocate, and the national monitor advocate an annual summary describing how the State provides employment services to MSFWs within their State based on statistical data and their reviews and activities as required in this chapter. The summary must include:

(1) A description of the activities undertaken during the program year by the State monitor advocate pertaining to his/her responsibilities set forth in this section and other applicable regulations in this part.

(2) An assurance that the State monitor advocate has direct, personal access, whenever he/she finds it necessary, to the State Administrator and that the State monitor advocate has status and compensation approved by the civil service classification system, and is comparable to other State positions assigned similar levels of tasks, complexity, and responsibility.

(3) An assurance that the State monitor advocate devotes all of his/her time to monitor advocate functions, or, if the State agency proposes conducting necessary State monitor advocate functions on a part-time basis, an explanation of how the State monitor advocate functions are effectively performed with part-time staffing.

(4) A summary of the monitoring reviews conducted by the State monitor advocate, including:

(i) A description of any problems, deficiencies, or improper practices the State monitor advocate identified in the delivery of services,

(ii) A summary of the actions taken by the State agency to resolve the problems, deficiencies, or improper practices described in its service delivery, and

(iii) A summary of any technical assistance the State monitor advocate provided for the State agency and the local employment service offices.

(5) A summary of the outreach efforts undertaken by all significant and non-significant MSFW employment service offices.

(6) A summary of the State's actions taken under the complaint system described in 20 CFR 658 subpart E, identifying any challenges, complaint trends, findings from reviews of the complaint system, trainings offered throughout the year, and steps taken to inform MSFWs and employers, and farmworker advocacy groups about the complaint system.

(7) A summary of how the State monitor advocate is working with WIOA title I sec. 167 NFJP grantees and other organizations serving farmworkers, employers and employer organizations,

in the State, and an assurance that the State monitor advocate is meeting at least quarterly with representatives of these organizations.

(8) A summary of the statistical and other MSFW-related data and reports gathered by State agencies and employment service offices for the year, including an overview of the State monitor advocate's involvement in the State agency's reporting systems.

(9) A summary of the training conducted for State agency personnel, including local office personnel, on techniques for accurately reporting data.

(10) A summary of activities related to the agricultural outreach plan, and an explanation of how those activities helped the State reach the goals and objectives described in the AOP. At the end of the 4-year AOP cycle, the summary must include a synopsis of the State agency's achievements over the previous 4 years to accomplish the goals set forth in the AOP, and a description of the goals which were not achieved and the steps the State agency will take to address those deficiencies.

(11) For significant MSFW employment offices, a summary of the functioning of the State's affirmative action staffing program under 20 CFR 653.111.

§ 653.109 Data collection and performance accountability measures.

State agencies must:

(a)) Collect career service indicator data specified in WIOA title I sec. 134(c)(2)(A)(xii).

(b) Collect data, in accordance with applicable ETA Reports and Guidance, on:

(1) The number of MSFWs contacted through outreach activities;

(2) The number of MSFWs and non-MSFWs registered for career services;

(3) The number of MSFWs referred to and placed in agricultural jobs;

(4) The number of MSFWs referred to and placed in non-agricultural jobs;

(5) The entered employment rate for MSFWs;

(6) The average earnings for MSFWs in both agricultural and non-agricultural jobs;

(7) The employment retention rate for MSFWs;

(8) The number of MSFWs served who identified themselves as male, female, African-American, Hispanic, American Indian, Asian, or Pacific Islander;

(9) Agricultural clearance orders (including field checks), MSFW complaints, and

monitoring activities; and

(10) Any other data required by the Department.

(c)) Provide necessary training to State agency personnel, including local office personnel, on techniques for accurately reporting data;

(d) Collect and submit data on MSFWs required by the Unified State Plan, as directed by the Department.

(e)) Periodically verify data required to be collected under this section, take necessary steps to ensure its validity, and submit the data for verification to the Department, as directed by the Department.

(f)) Submit additional reports to the Department as directed.

(g) Meet equity indicators that address ES controllable services and include, at a minimum, individuals referred to a job, receiving job development, and referred to supportive or career services.

(h) Meet minimum levels of service in significant MSFW States. That is, only significant MSFW State agencies will be required to meet minimum levels of service to MSFWs. Minimum level of service indicators must include, at a minimum, individuals placed in a job; individuals placed long-term (150 days or more) in a non-agricultural job; a review of significant MSFW local employment service offices; field checks conducted, outreach contacts per week; and processing of complaints. The determination of the minimum service levels required of significant MSFW States

for each year must be based on the following:

(1) Past State agency performance in serving MSFWs, as reflected in on-site reviews and

data collected under § 653.109;

(2) The need for services to MSFWs in the following year, comparing prior and projected levels of MSFW activity.

§ 653.110 Disclosure of data.

(a)) State agencies must disclose to the public, on written request, in conformance with applicable State and Federal law, the data collected by State and local employment service offices pursuant to § 653.109, if possible within 10 working days after receipt of the request.

(b) If a request for data held by a State agency is made to the ETA national or regional office, the ETA must forward the request to the State agency for response.

(c) If the State agency cannot supply the requested data within 10 business days after receipt of the request, the State agency must respond to the requestor in writing, giving the reason for the delay and specifying the date by which it expects to be able to comply.

(d) State agency intra-agency memoranda and reports (or parts thereof) and memoranda and reports (or parts thereof) between the State agency and the ETA, to the extent that they contain statements of opinion rather than facts, may be withheld from public disclosure provided the reason for withholding is given to the requestor in writing. Similarly, documents or parts thereof, which, if disclosed, would constitute an unwarranted invasion of personal or employer privacy, or are

otherwise privileged against disclosure, may also be withheld provided the reason is given to the requestor in writing.

§ 653.111 State agency staffing requirements.

(a) The State agency must implement and maintain an affirmative action program for staffing in significant MSFW one-stop centers, and will employ ES staff in a manner facilitating the delivery of ES services tailored to the special needs of MSFWs, including:

(1) The positioning of multilingual staff in offices serving a significant number of Spanish-speaking or LEP participants; and

(2) The hiring of staff members from the MSFW community or members of community-based migrant programs.

(b) The State agency must hire sufficient numbers of qualified, permanent minority staff in significant MSFW employment service offices. State agencies will determine whether a "sufficient number" of staff has been hired by conducting a comparison between the characteristics of the staff and the workforce and determining if the composition of the local office staff(s) is representative of the racial and ethnic characteristics of the work force in the local employment office service area(s). State agencies with significant MSFW local employment service offices, must undertake special efforts to recruit MSFWs and persons from MSFW backgrounds for its staff.

(1) Where qualified minority applicants are not available to be hired as permanent staff, qualified minority part-time, provisional, or temporary staff must be hired in accordance with State merit system procedures, where applicable.

(2) If a local employment service office does not have a sufficient number of qualified

minority staff, the State agency must establish a goal to achieve sufficient staffing at the local employment service office. The State agency will also establish a reasonable timetable for achieving the staffing goal by hiring or promoting available, qualified staff in the under- represented categories. In establishing timetables, the State agency must consider the vacancies anticipated through expansion, contraction, and turnover in the office(s) and available funds. All affirmative action programs must establish timetables that are designed to achieve the staffing

goal no later than 1 year after the submission of the Unified or Combined State Plan or annual

summary, whichever is sooner. Once such goals have been achieved, the State agency must submit a State Plan modification request to the Department with the assurance that the requirements of paragraph (b) of this section have been achieved.

(3) The State monitor advocates, regional monitor advocates, or the national monitor advocate, as part of their regular reviews of State agency compliance with these regulations, must monitor the extent to which the State agency has complied with its affirmative action program.

Subpart C - E—[Reserved]

Subpart F—Agricultural Recruitment System for U.S. Farmworkers (ARS)

§ 653.500 Purpose and scope of subpart.

This subpart includes the requirements for the acceptance of intrastate and interstate job clearance orders which seek U.S. workers to perform farmwork on a temporary, less than year- round basis. Orders seeking workers to perform farmwork on a year-round basis are not subject to the requirements of this subpart. This section affects all job orders for workers who are recruited through the employment service interstate and intrastate clearance systems for less than year-round farmwork, including both MSFWs and non-MSFW job seekers.

§ 653.501 Requirements for processing clearance orders.

(a) No local employment service office or State agency may place a job order seeking workers to perform farmwork into intrastate or interstate clearance unless:

(1) The local employment service office and employer have attempted, and have not

been able, to obtain sufficient workers within the local labor market area, or

(2) The local employment service office anticipates a shortage of local workers.

(b) Employment service office responsibilities. (1) Each employment service office

must ensure that the agricultural clearance form prescribed by the Department (ETA Form 790 or its subsequently issued form), and its attachments are complete when placing intrastate or interstate clearance orders seeking farmworkers.

(2) All clearance orders must be posted in accordance with applicable ETA guidance. If the job order for the local employment service office incorporates offices beyond the local office commuting area, the employment service office must suppress the employer information in order to facilitate the orderly movement of workers within the employment service system.

(3) Employment service staff must determine, through a preoccupancy housing inspection performed by employment service staff or other appropriate public agency, that the housing assured by the employer is either available and meets the applicable housing standards or has been approved for conditional access to the clearance system as set forth in 20 CFR 653.502; except that mobile range housing for sheepherders and goatherders must meet existing Departmental guidelines and/or applicable regulations.

(c) State agency responsibilities. (1) State agencies must ensure that intrastate and

interstate orders:

(i) Include the following language: "In view of the statutorily established basic function of the employment service as a no-fee labor exchange, that is, as a forum for bringing together employers and job seekers, neither the ETA nor the State agencies are guarantors of the accuracy or truthfulness of information contained on job orders submitted by employers. Nor does any job order accepted or recruited upon by the employment service constitute a contractual job offer to

which the ETA or a State agency is in any way a party;"

(ii) Do not contain an unlawful discriminatory specification by race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, or genetic information;

(iii) Are signed by the employer; and

(iv) State all the material terms and conditions of the employment, including:

(A) The crop;

(B) The nature of the work;

(C) The anticipated period and hours of employment;

(D) The anticipated starting and ending date of employment and the anticipated number of days and hours per week for which work will be available;

(E) The hourly wage rate or the piece rate estimated in hourly wage rate equivalents for each activity and unit size;

(F) Any deductions to be made from wages;

(G)) A specification of any non-monetary benefits to be provided by the employer;

(H) Any hours, days or weeks for which work is guaranteed, and, for each guaranteed week of work except as provided in paragraph (c)(3)(i) of this section, the exclusive manner in which the guarantee may be abated due to weather conditions or other acts of God beyond the employer's control; and

(I) Any bonus or work incentive payments or other expenses which will be paid by the employer in addition to the basic wage rate, including the anticipated time period(s) within which such payments will be made.

(2) State agencies must ensure that:

(i) The wages and working conditions offered are not less than the prevailing wages and working conditions among similarly employed farmworkers in the area of intended employment

or the applicable Federal or State minimum wage, whichever is higher. If the wages offered are expressed as piece rates or as base rates and bonuses, the employer must make the method of calculating the wage and supporting materials available to employment service staff who must check if the employer's calculation of the estimated hourly wage rate is reasonably accurate and is not less than the prevailing wage rate or applicable Federal or State minimum wage, whichever is higher; and

(ii) The employer has agreed to provide or pay for the transportation of the workers and their families at or before the end of the period of employment specified in the job order on at least the same terms as transportation is commonly provided by employers in the area of intended employment to farmworkers and their families recruited from the same area of supply. Under no circumstances may the payment or provision of transportation occur later than the departure time

needed to return home to begin the school year, in the case of any worker with children 18 years old or younger, or be conditioned on the farmworker performing work after the period of employment specified in the job order.

(3) State agencies must ensure that the clearance order includes the following assurances:

(i) The employer will provide to workers referred through the clearance system the number of hours of work cited in paragraph (c)(1)(iv)(D) of this section for the week beginning with the anticipated date of need, unless the employer has amended the date of need at least 10 working days prior to the original date of need (pursuant to paragraph (c)(3)(iv) of this section) by so notifying the order-holding office. The State agency must make a record of this notification and must attempt to expeditiously inform referred workers of the change.

(ii) No extension of employment beyond the period of employment specified in the clearance order may relieve the employer from paying the wages already earned, or if specified in the clearance order as a term of employment, providing transportation or paying transportation expenses to the worker's home.

(iii) The working conditions comply with applicable Federal and State minimum wage, child labor, social security, health and safety, farm labor contractor registration and other employment-related laws.

(iv) The employer will expeditiously notify the order-holding office or State agency by e-mailing and telephoning immediately upon learning that a crop is maturing earlier or later, or that weather conditions, over-recruitment or other factors have changed the terms and conditions of employment.

(v) The employer, if acting as a farm labor contractor ("FLC") or farm labor contractor employee ("FLCE") on the order, has a valid Federal FLC certificate or Federal FLCE identification card; and when appropriate, any required State farm labor contractor certificate.

(vi) The availability of no cost or public housing which meets the Federal standards and which is sufficient to house the specified number of workers requested through the clearance system. This assurance must cover the availability of housing for only those workers, and, when applicable, family members who are unable to return to their residence in the same day.

(vii) Outreach workers must have reasonable access to the workers in the conduct of outreach activities pursuant to § 653.107.

(viii) The job order contains all the material terms and conditions of the job. The employer must assure this by signing the following statement in the clearance order: "This clearance order describes the actual terms and conditions of the employment being offered by me and contains all the material terms and conditions of the job."

(4) If a State agency discovers that an employer's clearance order contains a material misrepresentation, the State agency may initiate the Discontinuation of Services as set forth in 20 CFR part 658, subpart F.

(5) If there is a change to the anticipated date of need and the employer fails to notify the order-holding office at least 10 working days prior to the original date of need the employer must pay eligible (pursuant to paragraph (d)(4) of this section) workers referred through the clearance system the specified hourly rate of pay, or if the pay is piece-rate, the higher of the Federal or State minimum wage for the first week starting with the originally anticipated date of need or provide alternative work if such alternative work is stated on the clearance order. If an employer fails to

comply under this section the order holding office may notify DOL's Wage and Hour Division for possible enforcement.

(d) Processing clearance orders. This section does not apply to clearance orders that are

attached to applications for foreign temporary agricultural workers pursuant to 20 CFR 655 subpart B.

(1) The order-holding office must transmit an electronic copy of the approved clearance order to the State agency. The State agency must distribute additional electronic copies of the form with all attachments (except that the State agency may, at its discretion, delegate this distribution to the local office) as follows:

(i) At least one copy of the clearance order must be sent to each of the State agencies selected for recruitment (areas of supply);

(ii) At least one copy of the clearance order must be sent to each applicant-holding ETA regional office;

(iii) At least one copy of the clearance order must be sent to the order-holding ETA regional office; and

(iv) At least one copy of the clearance order must be sent to the Regional Farm Labor Coordinated Enforcement Committee and/or other Occupational Safety and Health Administration and Wage and Hour Division regional agricultural coordinators, and/or other committees as appropriate in the area of employment.

(2) The local office may place an intrastate or interstate order seeking workers to perform

farmwork for a specific farm labor contractor or for a worker preferred by an employer provided the order meets employment service nondiscrimination criteria. The order would not meet such criteria, for example, if it requested a "white male crew leader" or "any white male crew leader."

(3) The ETA regional office must review and approve the order within 10 working days of its receipt of the order, and the Regional Administrator or his/her designee must approve the areas of supply to which the order will be extended. Any denial by the Regional Administrator or his/her designee must be in writing and state the reasons for the denial.

(4) The applicant holding office must notify all referred farmworkers, farm labor contractors on behalf of farmworkers, or family heads on behalf of farmworker family members, to contact a local employment service office, preferably the order-holding office, to verify the date of need cited in the clearance order between nine and 5 working days prior to the original date of need cited in the clearance order; and that failure to do so will disqualify the referred

farmworker from the first weeks' pay as described in paragraph (c)(3)(i) of this section. The State agency must make a record of this notification.

(5) If the worker referred through the clearance system contacts a local employment service office (in any State) other than the order holding office, that local employment service office must assist the referred worker in contacting the order holding office on a timely basis. Such assistance must include, if necessary, contacting the order holding office by telephone or other timely means on behalf of the worker referred through the clearance system.

(6) Local employment service office staff must assist all farmworkers, upon request in their native language, to understand the terms and conditions of employment set forth in intrastate and interstate clearance orders and must provide such workers with checklists in their native language showing wage payment schedules, working conditions, and other material specifications

of the clearance order.

(7) If an order holding office learns that a crop is maturing earlier than expected or that other material factors, including weather conditions and recruitment levels, have changed since the date the clearance order was accepted, the agency must immediately contact the applicant holding office which must immediately inform crews and families scheduled to report to the job site of the changed circumstances and must adjust arrangements on behalf of such crews and families.

(8) When there is a delay in the date of need, State agencies must document notifications by employers and contacts by individual farmworkers or crew leaders on behalf of farmworkers or family heads on behalf of farmworker family members to verify the date of need.

(9) If weather conditions, over-recruitment or other conditions have eliminated the

scheduled job opportunities, the State agencies involved must make every effort to place the

workers in alternate job opportunities as soon as possible, especially if the worker(s) is already en-route or at the job site. Employment service office staff must keep records of actions under this section.

(10) Applicant-holding offices must provide workers referred on clearance orders with a checklist summarizing wages, working conditions and other material specifications in the clearance order. Such checklists, where necessary, must be in the workers' native language. The checklist must include language notifying the worker that a copy of the original clearance order is available upon request. State agencies must use a standard checklist format provided by the Department (such as in Form WH516 or a successor form).

(11) The applicant-holding office must give each referred worker a copy of the list of

worker's rights described in the Department's ARS Handbook.

(12) If the labor supply State agency accepts a clearance order, the State agency must actively recruit workers for referral. In the event a potential labor supply State agency rejects a clearance order, the reasons for rejection must be documented and submitted to the Regional Administrator having jurisdiction over the State agency. The Regional Administrator will examine the reasons for rejection, and, if the Regional Administrator agrees, will inform the Regional Administrator with jurisdiction over the order-holding State agency of the rejection and the reasons. If the Regional Administrator who receives the notification of rejection does not concur with the reasons for rejection, that Regional Administrator will inform the national monitor advocate, who, in consultation with the Administrator of ETA's Office of Workforce Investment, will make a final determination on the acceptance or rejection of the order.

§ 653.502 Conditional access to the agricultural recruitment system.

(a) Filing requests for conditional access—(1) "Noncriteria" employers. Except as provided in paragraph (a)(2) of this section, an employer whose housing does not meet applicable standards may file with the local employment service office serving the area in which its housing is located, a written request that its clearance orders be conditionally allowed into the intrastate or interstate clearance system, provided that the employer's request assures that its housing will be in full compliance with the requirements of the applicable housing standards at least 20 calendar days (giving the specific date) before the housing is to be occupied.

(2) "Criteria" employers. If the request for conditional access described in paragraph

(a)(1) of this section is from an employer filing a clearance order pursuant to an application for temporary alien agricultural labor certification for H-2A workers under subpart B of part 655 of this chapter, the request must be filed with the Certifying Officer (CO) at the Department's Chicago National Processing Center (NPC) designated by the Office of Foreign Labor Certification (OFLC) Administrator to make determinations on applications for temporary employment certification under the H-2A program. .

(3) Assurance. The employer's request pursuant to paragraphs (a)(1) or (2) of this section must contain an assurance that the housing will be in full compliance with the applicable housing standards at least 20 calendar days (stating the specific date) before the housing is to be occupied.

(b) Processing requests—(1) State agency processing. Upon receipt of a written request for conditional access to the intrastate or interstate clearance system under paragraph (a)(1) of this section, the local employment service office must send the request to the State agency, which, in turn, must forward it to the Regional Administrator.

(2) Regional office processing and determination. Upon receipt of a request for conditional access pursuant to paragraph (b)(1) of this section, the Regional Administrator must review the matter and, as appropriate, must either grant or deny the request.

(c) Authorization. The authorization for conditional access to the intrastate or interstate clearance system must be in writing, and must state that although the housing does not comply with the applicable standards, the employer's job order may be placed into intrastate or interstate clearance until a specified date. The Regional Administrator must send the authorization to the employer and must send copies (hard copy or electronic) to the appropriate State agency and local employment service office. The employer must submit and the local employment service office must attach copies of the authorization to each of the employer's clearance orders which is placed into intrastate or interstate clearance.

(d) Notice of denial. If the Regional Administrator denies the request for conditional access to the intrastate or interstate clearance system they must provide written notice to the employer, the appropriate State agency, and the local employment service office, stating the reasons for the denial.

(e) Inspection. The local employment service office serving the area containing the housing of any employer granted conditional access to the intrastate or interstate clearance system must assure that the housing is inspected no later than the date by which the employer has promised to have its housing in compliance with the applicable housing standards. An employer, however, may request an earlier preliminary inspection. If, on the date set forth in the authorization, the housing is not in full compliance with the applicable housing standards as assured in the request

for conditional access, the local employment service office must afford the employer 5 calendar days to bring the housing into full compliance. After the 5-calendar-day period, if the housing is not in full compliance with the applicable housing standards as assured in the request for conditional access, the local employment service office immediately:

(1) Must notify the RA, or the NPC designated by the Regional Administrator;

(2) Must remove the employer's clearance orders from intrastate and interstate clearance;

and

(3) Must, if workers have been recruited against these orders, in cooperation with the employment service agencies in other States, make every reasonable attempt to locate and notify the appropriate crew leaders or workers, and to find alternative and comparable employment for the workers.

§ 653.503 Field checks.

(a) If a worker is placed on a clearance order, the State agency must notify the employer in writing that the State agency, through its local employment service offices, and/or Federal staff, must conduct random, unannounced field checks to determine and document whether wages, hours, and working and housing conditions are being provided as specified in the clearance order.

(b) The State agency must conduct field checks on at least 25 percent of all agricultural

worksites where placements have been made through the intrastate or interstate clearance system or at 100 percent of the worksites where less than 10 employment service placements have been made. This requirement must be met on a quarterly basis.

(c) Field checks must include visit(s) to the worksite at a time when workers are present. When conducting field checks, local employment service staff must consult both the employees and the employer to ensure compliance with the full terms and conditions of employment.

(d) If State agency or Federal personnel observe or receive information, or otherwise have reason to believe that conditions are not as stated in the clearance order or that an employer is violating an employment-related law, the State agency must document the finding and attempt informal resolution. If the matter has not been resolved within 5 working days, the State agency must initiate the Discontinuation of Services as set forth at 20 CFR part 658 subpart F and must refer apparent violations of employment-related laws to appropriate enforcement agencies in writing.

(e)) State agencies may enter into formal or informal arrangements with appropriate State and Federal enforcement agencies where the enforcement agency staff may conduct field checks instead of and on behalf of State agency personnel. The agreement may include the sharing of information and any actions taken regarding violations of the terms and conditions of the employment as stated in the clearance order and any other violations of employment related laws. An enforcement agency field check must satisfy the requirement for State agency field checks where all aspects of wages, hours, working and housing conditions have been reviewed by the enforcement agency. The State agency must supplement enforcement agency efforts with field checks focusing on areas not addressed by enforcement agencies.

(g) ES staff must keep records of all field checks.

PART 654 – SPECIAL RESPONSIBILITIES OF THE EMPLOYMENT SERVICE SYSTEM

20. Revise the authority citation for part 654 to read as follows: Authority: 29 U.S.C. 49k; 8 U.S.C. 1188(c)(4); 41 Op.A.G. 406 (1959).

21. Revise subpart E of part 654 to read as follows:

Subpart E—Housing for Agricultural Workers

Purpose and Applicability

Sec.

654.400 Scope and purpose.

654.401 Applicability.

654.402 Variances.

654.403 [Reserved].

Housing Standards

Sec.

654.404 Housing site.

654.405 Water supply.

654.406 Excreta and liquid waste disposal.

654.407 Housing.

654.408 Screening.

654.409 Heating.

654.410 Electricity and lighting.

654.411 Toilets.

654.412 Bathing, laundry, and hand washing.

654.413 Cooking and eating facilities.

654.414 Garbage and other refuse.

654.415 Insect and rodent control.

654.416 Sleeping facilities.

654.417 Fire, safety, and first aid.

Subpart E—Housing for Agricultural Workers

Purpose and Applicability

§ 654.400 Scope and purpose.

(a) This subpart sets forth the Department's Employment and Training Administration (ETA) standards for agricultural housing and variances. Local employment service offices, as part of the State employment service agencies and in cooperation with the United States Employment Service, assist employers in recruiting agricultural workers from places outside the area of intended employment. The experiences of the employment service agencies indicate that employees so referred have on many occasions been provided with inadequate, unsafe, and unsanitary housing conditions. To discourage this practice, it is the policy of the Federal-State employment service system to deny its intrastate and interstate recruitment services to employers until the State employment service agency has ascertained that the employer's housing meets certain standards.

(b) To implement this policy, § 653.501 of this chapter provides that recruitment services must be denied unless the employer has signed an assurance that if the workers are to be housed, a preoccupancy inspection has been conducted and the employment service staff has ascertained that, with respect to intrastate or interstate clearance orders, the employer's housing meets the full set of standards set forth at 29 CFR 1910.142 or 20 CFR 654 subpart E, except that mobile range housing for sheepherders or goatherders must meet existing Departmental guidelines and/or applicable regulations.

(c) Per § 654.401(a) below, this subpart is effective only until [ONE YEAR AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER].

§ 654.401 Applicability.

(a) Housing that was completed or under construction prior to April 3, 1980 or was under a signed contract for construction prior to March 4, 1980 may continue to follow the full set of the Department's ETA standards set forth in this subpart until the date specified in paragraph (b) of this section.

(b) On [ONE YEAR AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER] all housing for agricultural workers governed by the standards set forth in this subpart must comply with the Occupational Safety and Health Administration's (OSHA) housing standards set forth in 29 CFR 1910.142.

(c) To effectuate the transition to the OSHA standards, agricultural housing to which this subpart applies and which complies with the full set of standards and provisions set forth in this subpart must be considered to be in compliance with the OSHA temporary labor camp standards at 29 CFR 1910.142 until [ONE YEAR AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER].

§ 654.402 Variances.

(a) An employer may apply for a structural variance from a specific standard(s) in this subpart by filing a written application for such a variance with the local employment service office serving the area in which the housing is located. This application must:

(1) Clearly specify the standard(s) from which the variance is desired;

(2) Provide adequate justification that the variance is necessary to obtain a beneficial use of an existing facility, and to prevent a practical difficulty or unnecessary hardship; and

(3) Clearly set forth the specific alternative measures which the employer has taken to protect the health and safety of workers and adequately show that such alternative measures have achieved the same result as the standard(s) from which the employer desires the variance.

(b) Upon receipt of a written request for a variance under paragraph (a) of this section, the local employment service office must send the request to the State office which, in turn, must forward it to the ETA Regional Administrator (RA). The RA must review the matter and, after consultation with OSHA, must either grant or deny the request for a variance.

(c) The variance granted by the RA must be in writing, must state the particular

standard(s) involved, and must state as conditions of the variance the specific alternative

measures which have been taken to protect the health and safety of the workers. The RA must send the approved variance to the employer and must send copies to OSHA's Regional Administrator, the Regional Administrator of the Wage and Hour Division (WHD), and the appropriate State agency and the local employment service office. The employer must submit and the local employment service office must attach copies of the approved variance to each of the employer's job orders which is placed into intrastate or interstate clearance.

(d) If the RA denies the request for a variance, the RA must provide written notice stating the reasons for the denial to the employer, the appropriate State agency and the local employment service office. The notice must also offer the employer an opportunity to request a hearing before a DOL Hearing Officer, provided the employer requests such a hearing from the RA within 30

calendar days of the date of the notice. The request for a hearing must be handled in accordance with the complaint procedures set forth at §§ 658.424 and 658.425 of this chapter.

(e) The procedures of paragraphs (a) through (d) of this section only apply to an employer who has chosen, as evidenced by its written request for a variance, to comply with the ETA housing standards at §§ 654.404-654.417 of this subpart.

(f) All requests and/or approvals for variance under this section will expire on [ONE YEAR AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER]. After that date no requests for variance will be accepted by the Department.

§ 654.403 [Reserved].

Housing

Standards

§ 654.404 Housing site.

(a) Housing sites must be well drained and free from depressions in which water may stagnate. They must be located where the disposal of sewage is provided in a manner which neither creates nor is likely to create a nuisance, or a hazard to health.

(b) Housing must not be subject to, or in proximity to conditions that create or are likely to create offensive odors, flies, noise, traffic, or any similar hazards.

(c)) Grounds within the housing site must be free from debris, noxious plants (poison ivy, etc.) and uncontrolled weeds or brush.

(d) The housing site must provide a space for recreation reasonably related to the size of the facility and the type of occupancy.

§ 654.405 Water supply.

(a) An adequate and convenient supply of water that meets the standards of the State health authority must be provided.

(b) A cold water tap must be available within 100 feet of each individual living unit when water is not provided in the unit. Adequate drainage facilities must be provided for overflow and spillage.

(c)) Common drinking cups are not permitted.

§ 654.406 Excreta and liquid waste disposal.

(a) Facilities must be provided and maintained for effective disposal of excreta and liquid waste. Raw or treated liquid waste may not be discharged or allowed to accumulate on the ground surface.

(b) Where public sewer systems are available, all facilities for disposal of excreta and liquid wastes must be connected thereto.

(c)) Where public sewers are not available, a subsurface septic tank-seepage system or other type of liquid waste treatment and disposal system, privies or portable toilets must be provided. Any requirements of the State health authority must be complied with.

§ 654.407 Housing.

(a) Housing must be structurally sound, in good repair, in a sanitary condition and must provide protection to the occupants against the elements.

(b) Housing must have flooring constructed of rigid materials, smooth finished, readily cleanable, and so located as to prevent the entrance of ground and surface water.

(c) The following space requirements must be provided:

(1) For sleeping purposes only in family units and in dormitory accommodations using single beds, not less than 50 square feet of floor space per occupant;

(2) For sleeping purposes in dormitory accommodations using double bunk beds only, not less than 40 square feet per occupant;

(3) For combined cooking, eating, and sleeping purposes not less than 60 square feet of floor space per occupant.

(d) Housing used for families with one or more children over 6 years of age must have a room or partitioned sleeping area for the husband and wife. The partition must be of rigid materials and installed so as to provide reasonable privacy.

(e)) Separate sleeping accommodations must be provided for each sex or each family.

(f) Adequate and separate arrangements for hanging clothing and storing personal effects for each person or family must be provided.

(g) At least one-half of the floor area in each living unit must have a minimum ceiling height of 7 feet. No floor space may be counted toward minimum requirements where the ceiling height is less than 5 feet.

(h) Each habitable room (not including partitioned areas) must have at least one window or skylight opening directly to the out-of-doors. The minimum total window or skylight area, including windows in doors, must equal at least 10 percent of the usable floor area. The total

openable area must equal at least 45 percent of the minimum window or skylight area required, except where comparably adequate ventilation is supplied by mechanical or some other method.

§ 654.408 Screening.

(a) All outside openings must be protected with screening of not less than 16 mesh.

(b) All screen doors must be tight fitting, in good repair, and equipped with self-closing devices.

§ 654.409 Heating.

(a) All living quarters and service rooms must be provided with properly installed, operable heating equipment capable of maintaining a temperature of at least 68 °F if during the period of normal occupancy the temperature in such quarters falls below 68°F.

(b) Any stoves or other sources of heat utilizing combustible fuel must be installed and vented in such a manner as to prevent fire hazards and a dangerous concentration of gases. No portable heaters other than those operated by electricity may be provided. If a solid or liquid fuel stove is used in a room with wooden or other combustible flooring, there must be a concrete slab, insulated metal sheet, or other fireproof material on the floor under each stove, extending at least 18 inches beyond the perimeter of the base of the stove.

(c) Any wall or ceiling within 18 inches of a solid or liquid fuel stove or a stovepipe must be of fireproof material. A vented metal collar must be installed around a stovepipe, or vent passing through a wall, ceiling, floor or roof.

(d) When a heating system has automatic controls, the controls must be of the type which cut off the fuel supply upon the failure or interruption of the flame or ignition, or

whenever a predetermined safe temperature or pressure is exceeded.

§ 654.410 Electricity and lighting.

(a) All housing sites must be provided with electric service.

(b) Each habitable room and all common use rooms, and areas such as: laundry rooms, toilets, privies, hallways, stairways, etc., must contain adequate ceiling or wall-type light fixtures. At least one wall-type electrical convenience outlet must be provided in each individual living room.

(c) Adequate lighting must be provided for the yard area, and pathways to common use facilities.

(d) All wiring and lighting fixtures must be installed and maintained in a safe condition.

§ 654.411 Toilets.

(a) Toilets must be constructed, located and maintained so as to prevent any nuisance or public health hazard.

(b) Water closets or privy seats for each sex must be in the ratio of not less than one such unit for each 15 occupants, with a minimum of one unit for each sex in common use facilities.

(c)) Urinals, constructed of nonabsorbent materials, may be substituted for men's toilet seats on the basis of one urinal or 24 inches of trough-type urinal for one toilet seat up to a maximum of one-third of the required toilet seats.

(d) Except in individual family units, separate toilet accommodations for men and women must be provided. If toilet facilities for men and women are in the same building, they must be separated by a solid wall from floor to roof or ceiling. Toilets must be distinctly marked "men" and

"women" in English and in the native language of the persons expected to occupy the housing.

(e)) Where common use toilet facilities are provided, an adequate and accessible supply of toilet tissue, with holders, must be furnished.

(f)) Common use toilets and privies must be well lighted and ventilated and must be clean and sanitary.

(g) Toilet facilities must be located within 200 feet of each living unit.

(h) Privies may not be located closer than 50 feet from any living unit or any facility where food is prepared or served.

(i) Privy structures and pits must be fly tight. Privy pits must have adequate capacity for the required seats.

§ 654.412 Bathing, laundry, and hand washing.

(a) Bathing and hand washing facilities, supplied with hot and cold water under pressure, must be provided for the use of all occupants. These facilities must be clean and sanitary and located within 200 feet of each living unit.

(b) There must be a minimum of 1 showerhead per 15 persons. Showerheads must be spaced at least 3 feet apart, with a minimum of 9 square feet of floor space per unit. Adequate, dry dressing space must be provided in common use facilities. Shower floors must be constructed of nonabsorbent nonskid materials and sloped to properly constructed floor drains.

Except in individual family units, separate shower facilities must be provided each sex. When common use shower facilities for both sexes are in the same building they must be separated by a solid nonabsorbent wall extending from the floor to ceiling, or roof, and must be plainly designated "men"

or “women” in English and in the native language of the persons expected to occupy the housing.

(c) Lavatories or equivalent units must be provided in a ratio of 1 per 15 persons.

(d) Laundry facilities, supplied with hot and cold water under pressure, must be provided for the use of all occupants. Laundry trays or tubs must be provided in the ratio of 1 per 25 persons. Mechanical washers may be provided in the ratio of 1 per 50 persons in lieu of laundry trays, although a minimum of 1 laundry tray per 100 persons must be provided in addition to the mechanical washers.

§ 654.413 Cooking and eating facilities.

(a) When workers or their families are permitted or required to cook in their individual unit, a space must be provided and equipped for cooking and eating. Such space must be provided with:

(1) A cookstove or hot plate with a minimum of two burners;

(2) Adequate food storage shelves and a counter for food preparation;

(3) Provisions for mechanical refrigeration of food at a temperature of not more than 45 °F.;

(4) A table and chairs or equivalent seating and eating arrangements, all commensurate with the capacity of the unit; and

(5) Adequate lighting and ventilation.

(b) When workers or their families are permitted or required to cook and eat in a common facility, a room or building separate from the sleeping facilities must be provided for cooking and eating. Such room or building must be provided with:

(1) Stoves or hot plates, with a minimum equivalent of two burners, in a ratio of 1 stove or hot plate to 10 persons, or 1 stove or hot plate to 2 families;

(2) Adequate food storage shelves and a counter for food preparation;

(3) Mechanical refrigeration for food at a temperature of not more than 45 °F.;

(4) Tables and chairs or equivalent seating adequate for the intended use of the facility;

(5) Adequate sinks with hot and cold water under pressure;

(6) Adequate lighting and ventilation; and

(7) Floors must be of nonabsorbent, easily cleaned materials.

(c)) When central mess facilities are provided, the kitchen and mess hall must be in proper proportion to the capacity of the housing and must be separate from the sleeping quarters. The physical facilities, equipment and operation must be in accordance with provisions of applicable State codes.

(d) Wall surface adjacent to all food preparation and cooking areas must be of nonabsorbent, easily cleaned material. In addition, the wall surface adjacent to cooking areas must be of fire-resistant material.

§ 654.414 Garbage and other refuse.

(a) Durable, fly-tight, clean containers in good condition of a minimum capacity of 20 gallons, must be provided adjacent to each housing unit for the storage of garbage and other refuse. Such containers must be provided in a minimum ratio of 1 per 15 persons.

(b) Provisions must be made for collection of refuse at least twice a week, or more often if

necessary. The disposal of refuse, which includes garbage, must be in accordance with State and local law.

§ 654.415 Insect and rodent control.

Housing and facilities must be free of insects, rodents, and other vermin.

§ 654.416 Sleeping facilities.

(a)) Sleeping facilities must be provided for each person. Such facilities must consist of comfortable beds, cots, or bunks, provided with clean mattresses.

(b) Any bedding provided by the housing operator must be clean and sanitary.

(c) Triple deck bunks may not be provided.

(d) The clear space above the top of the lower mattress of a double deck bunk and the bottom of the upper bunk must be a minimum of 27 inches. The distance from the top of the upper mattress to the ceiling must be a minimum of 36 inches.

(e) Beds used for double occupancy may be provided only in family accommodations.

§ 654.417 Fire, safety, and first aid.

(a) All buildings in which people sleep or eat must be constructed and maintained in accordance with applicable State or local fire and safety laws.

(b) In family housing and housing units for less than 10 persons, of one story construction, two means of escape must be provided. One of the two required means of escape may be a readily accessible window with an openable space of not less than 24×24 inches.

(c) All sleeping quarters intended for use by 10 or more persons, central dining facilities,

and common assembly rooms must have at least two doors remotely separated so as to provide alternate means of escape to the outside or to an interior hall.

(d) Sleeping quarters and common assembly rooms on the second story must have a stairway, and a permanent, affixed exterior ladder or a second stairway.

(e)) Sleeping and common assembly rooms located above the second story must comply with the State and local fire and building codes relative to multiple story dwellings.

(f) Fire extinguishing equipment must be provided in a readily accessible place located not more than 100 feet from each housing unit. Such equipment must provide protection equal to a $2\frac{1}{2}$ gallon stored pressure or 5-gallon pump-type water extinguisher.

(g) First aid facilities must be provided and readily accessible for use at all time. Such facilities must be equivalent to the 16 unit first aid kit recommended by the American Red Cross, and provided in a ratio of 1 per 50 persons.

(h) No flammable or volatile liquids or materials must be stored in or adjacent to rooms used for living purposes, except for those needed for current household use.

(i) Agricultural pesticides and toxic chemicals may not be stored in the housing area.

22. Revise part 658 to read as follows:

PART 658 – ADMINISTRATIVE PROVISIONS GOVERNING THE EMPLOYMENT SERVICE SYSTEM

Subpart A-D [Reserved]

Subpart E—Employment Service and Employment-Related Law Complaint System

(Complaint System)

Sec.

658.400 Purpose and scope of subpart.

Complaints Filed at the Local and State Level

Sec.

658.410 Establishment of local and State complaint systems.

658.411 Action on complaints.

State hearings.

Decision of the State hearing official.

Apparent violations.

When a Complaint Rises to the Federal Level

Sec.

Responsibilities of the Employment and Training Administration regional office.

Handling of employment service regulation-related complaints.

Handling of employment-related law complaints by the Regional Administrator.

658.424 Proceedings before the Office of Administrative Law Judges.

658.425 Decision of Department of Labor Administrative Law Judge.

658.426 Complaints against the United States Employment Service.

Subpart F—Discontinuation of Services to Employers by the Employment Service System

Sec.

658.500 Scope and purpose of subpart.

658.501 Basis for discontinuation of services.

658.502 Notification to employers.

658.503 Discontinuation of services.

658.504 Reinstatement of services.

Subpart G—Review and Assessment of State Agency Compliance With Employment Service Regulations

Sec.

658.600 Scope and purpose of subpart.

658.601 State agency responsibility.

658.602 Employment and Training Administration National Office responsibility.

658.603 Employment and Training Administration regional office responsibility.

658.604 Assessment and evaluation of program performance data.

658.605 Communication of findings to State agencies.

Subpart H—Federal Application of Remedial Action to State Agencies

Sec.

658.700 Scope and purpose of subpart.

658.701 Statements of policy.

658.702 Initial action by the Regional Administrator.

658.703 Emergency corrective action.

658.704 Remedial actions.

658.705 Decision to decertify.

658.706 Notice of decertification.

658.707 Requests for hearings. 658.708 Hearings.

658.709 Conduct of hearings.

658.710 Decision of the Administrative Law Judge.

658.711 Decision of the Administrative Review Board.

Authority: Pub. L. 113-128 secs. 189, 503; Wagner-Peyser Act, as amended by Pub. L. 113-128 secs. 302 – 308, 29 U.S.C. 49 et seq.

Subpart A - D [Reserved]

Subpart E—Employment Service and Employment-Related Law Complaint System (Complaint System)

§ 658.400 Purpose and scope of subpart.

(a) This subpart sets forth the regulations governing the Complaint System for the employment service system at the State and Federal levels. Specifically, the Complaint System handles complaints against an employer about the specific job to which the applicant was referred through the employment service system and complaints involving the failure to comply with the employment service regulations under this part. As noted below, this subpart only covers employment service-related complaints made within 2 years of the alleged violation.

(b) Any complaints alleging violations under the Unemployment Insurance program, under WIOA title I programs, or complaints by veterans alleging employer violations of the mandatory listing requirements under 38 U.S.C. 4212 are not covered by this subpart, rather they are referred to the appropriate administering agency which would follow the procedures set forth in the respective regulations.

(c) The Complaint System also accepts, refers, and, under certain circumstances, tracks complaints involving employment-related laws as defined in 20 CFR 651.10.

Complaints Filed at the Local and State Level

§ 658.410 Establishment of local and State complaint systems.

(a) Each State Workforce Agency (SWA) must establish and maintain a Complaint System pursuant to this subpart.

(b) The State Administrator must have overall responsibility for the operation of the Complaint System. At the local employment service office level the manager must be responsible for the operation of the Complaint System.

(c)) SWAs must ensure that centralized control procedures are established for the processing of complaints. The manager of the local employment service office and the SWA Administrator must ensure that a central complaint log is maintained, listing all complaints taken by the local employment service office or the SWA, and specifying for each complaint:

(1) The name of the complainant;

(2) The name of the respondent (employer or State agency);

(3) The date the complaint is filed;

(4) Whether the complaint is by or on behalf of an MSFW;

(5) Whether the complaint concerns an employment-related law or the employment services regulations; and

(6) The action taken and whether the complaint has been resolved.

(d) State agencies must ensure that information pertaining to the use of the Complaint System is publicized, which must include, but is not limited to, the prominent display of an ETA-approved Complaint System poster in each one-stop center.

(e) Each local employment service office must ensure that there is appropriate staff available during regular office hours to take complaints.

(f)) Complaints may be accepted in any local employment service office of the State employment service agency, or by a State Workforce Agency, or elsewhere by an outreach worker.

(g) All complaints filed through the local employment service office must be handled by a trained Complaint System representative.

(h) All complaints received by a SWA must be assigned to a State agency official designated by the State Administrator, provided that the State agency official designated to handle MSFW complaints must be the State monitor advocate (SMA).

(i) State agencies must ensure that any action taken by the Complaint System representative, including referral, on a complaint from an MSFW is fully documented containing all relevant information, including a notation of the type of each complaint pursuant to Department guidance, a copy of the original complaint form, a copy of any employment service related reports, any relevant correspondence, a list of actions taken, a record of pertinent telephone calls and all correspondence relating thereto.

(j) Within 1 month after the end of the calendar quarter, the employment service office manager must transmit an electronic copy of the quarterly Complaint System log described in paragraph (c) of this section to the SMA. These logs must be made available to the Department upon request.

(k) The appropriate SWA or local employment office representative handling a complaint must offer to assist the complainant through the provision of appropriate services.

(l) The State Administrator must establish a referral system for cases where a complaint is filed alleging a violation that occurred in the same State but through a different local employment service office.

(m) Follow-up on unresolved complaints. When a complaint is submitted or referred to a SWA, the Complaint System representative (where the complainant is an MSFW, the Complaint System representative will be the SMA), must follow-up monthly regarding MSFW complaints and quarterly regarding non-MSFW complaints, and must inform the complainant of the status of the

complaint periodically.

§ 658.411 Action on complaints.

(a) Filing complaints. (1) Whenever an individual indicates an interest in filing a complaint with a local employment service office or SWA representative, or an outreach worker, the individual receiving the complaint must offer to explain the operation of the Complaint System and must offer to take the complaint in writing.

(2) During the initial discussion with the complainant, the staff taking the complaint must:

(i) Make every effort to obtain all the information he/she perceives to be necessary to investigate the complaint;

(ii) Request that the complainant indicate all of the physical addresses, email, and telephone numbers through which he/she might be contacted during the investigation of the complaint;

(iii) Request that the complainant contact the Complaint System representative before leaving the area if possible, and explain the need to maintain contact during the investigation.

(3) The staff must ensure that the complainant submits the complaint on the Complaint/Referral Form prescribed or approved by the Department. The Complaint/Referral Form must be used for all complaints, including complaints about unlawful discrimination, except as provided in paragraph (a)(4) of this section. The staff must offer to assist the complainant in filling out the form, and must do so if the complainant desires such assistance. If the complainant also represents several other complainants, all such complainants must be named on the Complaint/Referral Form. The complainant must sign the completed form in writing or electronically. The identity of the complainant(s) and any persons who furnish information

relating to, or assisting in, an investigation of a complaint must be kept confidential to the maximum extent possible, consistent with applicable law and a fair determination of the complaint. A copy of the completed Complaint/Referral Form must be given to the complainant(s), and the complaint form must be given to the appropriate Complaint System representative described in § 658.410 (g).

(4) Any complaint in a reasonable form (letter or email) which is signed by the complainant and includes sufficient information to initiate an investigation must be treated as if it were a properly completed Complaint/Referral Form filed in person. A letter (via hard copy or email) confirming that the complaint was received must be sent to the complainant and the document must be sent to the appropriate Complaint System representative. The Complaint System representative must request additional information from the complainant if the complaint does not provide sufficient information to investigate the matter expeditiously.

(b) Complaints regarding an employment-related law. (1) When a complaint is filed regarding an employment-related law with a local employment service office or a SWA the office must determine if the complainant is an MSFW.

(i) If the complainant is a non-MSFW, the office must immediately refer the complainant to the appropriate enforcement agency, another public agency, a legal aid organization, and/or a consumer advocate organization, as appropriate, for assistance. Upon completing the referral the local or State representative is not required to follow-up with the complainant.

(ii) If the complainant is a MSFW, the local employment service office or SWA Complaint System representative must:

(A) Take from the MSFW or his/her representative, in writing (hard copy or electronic),

the complaint(s) describing the alleged violation(s) of the employment-related law(s);

(B) Attempt to resolve the issue at the local level, except in cases where the complaint was submitted to the SWA and the SMA determines that he/she must take immediate action. Concurrently, the representative must offer to refer the MSFW to other employment services should the MSFW be interested.

(C) If the issue is not resolved within 5 business days, the representative must determine if the complaint should be referred to the appropriate enforcement agency, another public agency, a legal aid organization, or a consumer advocate organization, as appropriate, for further assistance.

(D) If the local employment service office or SWA Complaint System representative determines that the complaint should be referred to a State or Federal agency, he/she must refer the complaint to the SMA who must immediately refer the complaint to the appropriate enforcement agency for prompt action.

(E) If the complaint was referred to the SMA under paragraph (b)(1)(ii)(D) of this section, the representative must provide the SMA's contact information to the complainant. The SMA must notify the complainant of the enforcement agency to which the complaint was referred.

(2) If an enforcement agency makes a final determination that the employer violated an employment-related law and the complaint is connected to a job order, the SWA must initiate procedures for discontinuation of services immediately in accordance with subpart F. If this occurs, the SWA must notify the complainant and the employer of this action.

(c) <u>Complaints alleging a violation of rights under the Equal Employment Opportunity Commission Regulations</u>. (1) All complaints received by a local employment service office

alleging unlawful discrimination by race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, or genetic information, as well as reprisal for protected activity, the local Complaint System representative must refer the complaint to a local employment service Equal Opportunity (EO) representative and must notify the complainant of the referral in writing.

(2) If the local employment service office does not have an EO representative, the complaint must be sent to the SWA for assignment to the State EO representative or, where appropriate, handled in accordance with the procedures set forth at 29 CFR part 31.

(3) All such complaints initially received by the State Agency must be assigned to the State EO and, where appropriate, handled in accordance with the procedures set forth at 29 CFR part 31.

(4) Regardless of whether the complaint is initially received or referred to the State agency, the State EO representative must determine if the complaint is alleging discrimination by an employer. If so, the State EO representative must refer the complaint to the Equal Employment Opportunity Commission (EEOC) or another appropriate enforcement agency. Complaints not referred must be subject to the hearing and appeal rights provided in this subpart. The Complaint System representative must notify the complainant of the referral in writing.

(d) Complaints regarding the Employment Services Regulations (ES Complaints). (1) When an ES complaint is filed with a local employment service office or a SWA the following procedures apply:

(i) When an ES complaint is filed against an employer, the proper office to handle the complaint is the local employment service office serving the area in which the employer is located.

(ii) When a complaint is against an employer in another State or against another SWA:

(A) The local employment service office or SWA receiving the complaint must send, after ensuring that the Complaint/Referral Form is adequately completed, a copy of the Complaint/Referral Form and copies of any relevant documents to the SWA in the other State. Copies of the referral letter must be sent to the complainant, and copies of the complaint and referral letter must be sent to the ETA Regional Office(s) with jurisdiction over the transferring and receiving State agencies. All such copies must be sent via hard copy or electronic mail.

(B) The SWA receiving the complaint must handle the complaint as if it had been initially filed with that SWA.

(C) The ETA regional office with jurisdiction over the receiving SWA must follow-up with it to ensure the complaint is handled in accordance with these regulations.

(D) If the complaint is against more than one SWA, the complaint must so clearly state. (The complaint must be processed as separate complaints and must be handled according to procedures at paragraph (d) of this section.)

(iii) When an ES complaint is filed against a local employment service office, the proper office to handle the complaint is the local employment service office serving the area in which the alleged violation occurred.

(iv) When an ES complaint is filed against more than one local employment service office and is in regard to an alleged agency-wide violation the SWA representative or his/her designee must process the complaint.

(v) When a complaint is filed alleging a violation that occurred in the same State but through a different local employment service office, the local employment service office where the

complaint is filed must ensure that the Complaint/Referral Form is adequately completed and send the form to the appropriate local employment service office for tracking, further referral if necessary, and follow-up. A copy of the referral letter must be sent to the complainant via hard copy or electronic mail.

(2)(i) If a complaint regarding the employment services regulations is filed in a local employment service office by either a non-MSFW or MSFW, or their representatives, the appropriate local employment service office Complaint System representative must investigate and attempt to resolve the complaint immediately upon receipt.

(ii) If resolution has not been achieved to the satisfaction of the complainant within 15 working days after receipt of the complaint, or 5 working days with respect to complaints filed by or on behalf of MSFWs, the Complaint System representative must send the complaint to the SWA for resolution or further action, except that if the local employment service office has made a written request (via hard copy or electronic mail) for information pursuant to paragraph (e)(3) of this section. These time periods do not apply until the complainant's response is received in accordance with paragraph (e)(3) of this section.

(iii) The local employment service office must notify the complainant and the respondent, in writing (via hard copy or electronic mail), of the determination (pursuant to paragraph(d)(5) of this section) of its investigation under paragraph (d)(2)(i) of this section, or of the referral to the SWA (if referred).

(3) When a non-MSFW or his/her representative files a complaint regarding the employment service regulations with a SWA, or when a non-MSFW complaint is referred from a local employment office the following procedures apply:

(i) If the complaint is not transferred to an enforcement agency under paragraph (b)(1)(i) of this section the Complaint System representative must investigate and attempt to resolve the complaint immediately upon receipt.

(ii) If resolution at the SWA level has not been accomplished within 30 working days after the complaint was received by the SWA, whether the complaint was received directly or from a local employment service office pursuant to paragraph (d)(2)(ii) of this section, the SWA must make a written determination regarding the complaint and must send electronic copies to the complainant and the respondent except if the SWA has made a written request for information pursuant to paragraph (e)(3) of this section, this time period does not apply until the complainant's response is received in accordance with paragraph (e)(3) of this section. The determination must follow the procedures set forth in paragraph (d)(5) of this section.

(4)(i) When a MSFW or his/her representative files a complaint regarding the employment service regulations directly with a SWA, or when a MSFW complaint is referred from a local employment office, the SMA must investigate and attempt to resolve the complaint immediately upon receipt and may, if necessary, conduct a further investigation.

(ii) If resolution at the SWA level has not been accomplished within 20 business days after the complaint was received by the SWA, the SMA must make a written determination regarding the complaint and must send electronic copies to the complainant and the respondent

except that if the SWA has made a written request for information pursuant to paragraph (a)(4) of this section, this time period does not apply until the complainant's response is received in accordance with paragraph (e)(3) of this section. The determination must follow the procedures set forth in paragraph (d)(5) of this section.

(5) Written Determinations.

(i) All written determinations by local employment service or SWA officials on complaints under the employment services regulations must be sent by certified mail (or another legally viable method) and a copy of the determination may be sent via electronic mail. The determination must include all of the following:

(A) The results of any SWA investigation;

(B) The conclusions reached on the allegations of the complaint;

(C) If a resolution was not reached, an explanation of why the complaint was not resolved;

(D) If the complaint is against the SWA, an offer to the complainant of the opportunity to request, in writing, a hearing within 20 working days after the certified date of receipt of the notification.

(ii) If the SWA determines that the employer has not violated the employment service regulations, the SWA must offer to the complainant the opportunity to request a hearing within 20 working days after the certified date of receipt of the notification.

(iii) If the SWA, within 20 working days from the certified date of receipt of the notification provided for in paragraph (d)(5) of this section, receives a written request (via hard copy or electronic mail) for a hearing, the SWA must refer the complaint to a State hearing official for hearing. The SWA must, in writing (via hard copy or electronic mail), notify the respective parties to whom the determination was sent that:

(A) The parties will be notified of the date, time, and place of the hearing;

(B) The parties may be represented at the hearing by an attorney or other representative;

(C) The parties may bring witnesses and/or documentary evidence to the hearing;

(D) The parties may cross-examine opposing witnesses at the hearing;

(E) The decision on the complaint will be based on the evidence presented at the hearing;

(F) The State hearing official may reschedule the hearing at the request of a party or its representative; and

(G)) With the consent of the SWA's representative and of the State hearing official, the party who requested the hearing may withdraw the request for hearing in writing before the hearing.

(iv) If the State agency makes a final determination that the employer who has or is currently using the employment service system has violated the employment service regulations, the determination, pursuant to paragraph (d)(5) of this section, must state that the State will initiate procedures for discontinuation of services to the employer in accordance with subpart F of this part.

(6) A complaint regarding the employment service regulations must be handled to resolution by these regulations only if it is made within 2 years of the alleged occurrence.

(e) Resolution of complaints. A complaint is considered resolved when:

(1) The complainant indicates satisfaction with the outcome via written correspondence;

(2) The complainant chooses not to elevate the complaint to the next level of review;

(3) The complainant or the complainant's authorized representative fails to respond within 20 working days or, in cases where the complainant is an MSFW, 40 working days of a written request by the appropriate local employment service office or State agency;

(4) The complainant exhausts all available options for review; or

(5) A final determination has been made by the enforcement agency to which the complaint was referred.

§ 658.417 State hearings.

(a) The hearing described in § 658.411 must be held by State hearing officials. A State hearing official may be any State official authorized to hold hearings under State law. Examples of hearing officials are referees in State unemployment compensation hearings and officials of the State agency authorized to preside at State administrative hearings.

(b) The State hearing official may decide to conduct hearings on more than one complaint concurrently if he/she determines that the issues are related or that the complaints will be handled more expeditiously if conducted together.

(c) The State hearing official, upon the referral of a case for a hearing, must:

(1) Notify all involved parties of the date, time, and place of the hearing; and

(2) Reschedule the hearing, as appropriate.

(d) In conducting a hearing, the State hearing official must:

(1) Regulate the course of the hearing;

(2) Issue subpoenas if necessary, provided the official has the authority to do so under State law;

(3) Ensure that all relevant issues are considered;

(4) Rule on the introduction of evidence and testimony; and

(5) Take all actions necessary to ensure an orderly proceeding.

(e) All testimony at the hearing must be recorded and may be transcribed when appropriate.

(f) The parties must be afforded the opportunity to present, examine, and cross-examine witnesses.

(g) The State hearing official may elicit testimony from witnesses, but may not act as advocate for any party.

(h) The State hearing official must receive and include in the record, documentary evidence offered by any party and accepted at the hearing. Copies thereof must be made available by the party submitting the document to other parties to the hearing upon request.

(i) Federal and State rules of evidence do not apply to hearings conducted pursuant to this section; however rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination, must be applied where reasonably necessary by the State hearing official. The State hearing official may exclude irrelevant, immaterial, or unduly repetitious evidence.

(j) The case record, or any portion thereof, must be available for inspection and copying by any party at, prior to, or subsequent to the hearing upon request. Special procedures may be used for disclosure of medical and psychological records such as disclosure to a physician designated by the individual.

(k) The State hearing official must, if feasible, resolve the dispute at any time prior to the conclusion of the hearing.

(l) At the State hearing official's discretion, other appropriate individuals, organizations, or associations may be permitted to participate in the hearing as amicus curiae (friends of the court) with respect to any legal or factual issues relevant to the complaint. Any documents submitted by the amicus curiae must be included in the record.

(m) If the parties to the hearing are located in more than one State or are located in the same State but access to the hearing location is extremely inconvenient for one or more parties as determined by the State hearing official, the hearing official must:

(1) Whenever possible, hold a single hearing at a location convenient to all parties or their representatives wishing to appear and present evidence, with all such parties and/or their representatives present.

(2) If a hearing location cannot be established by the State hearing official under paragraph (m)(1) of this section, the State hearing official may conduct, with the consent of the parties, the hearing by a telephone conference call from a State agency office. If the hearing is conducted via telephone conference call the parties and their representatives must have the option to participate in person or via telephone.

(3) Where the State agency is not able, for any reason, to conduct a telephonic hearing under paragraph (m)(2) of this section, the State agencies in the States where the parties are located must take evidence and hold the hearing in the same manner as used for appealed interstate unemployment claims in those States, to the extent that such procedures are consistent with this section.

§ 658.418 Decision of the State hearing official.

(a) The State hearing official may:

(1) Rule that it lacks jurisdiction over the case;

(2) Rule that the complaint has been withdrawn properly in writing;

(3) Rule that reasonable cause exists to believe that the request has been abandoned;

(4) Render such other rulings as are appropriate to resolve the issues in question. However, the State hearing official does not have authority or jurisdiction to consider the validity or constitutionality of the employment service regulations or of the Federal statutes under which they are promulgated.

(b) Based on the entire record, including the investigations and determinations of the local employment service offices and State agencies and any evidence provided at the hearing, the State hearing official must prepare a written decision. The State hearing official must send a copy of the decision stating the findings of fact and conclusions of law, and the reasons therefor to the complainant, the respondent, entities serving as amicus capacity (if any), the State agency, the Regional Administrator, and the Solicitor of Labor, Attn: Associate Solicitor for Employment and Training Legal Services, Department of Labor, room N2101, 200 Constitution Avenue, NW., Washington, DC, 20210. The notification to the complainant and respondent must be sent by certified mail or by other legally viable means.

(c) All decisions of a State hearing official must be accompanied by a written notice informing the parties (not including the Regional Administrator, the Solicitor of Labor, or entities serving in an amicus capacity) that they may appeal the judge's decision within 20 working days of the certified date of receipt of the decision, file an appeal in writing with the Regional Administrator. The notice must give the address of the Regional Administrator.

§ 658.419 Apparent violations.

(a) If a State agency, local employment service office employee, or outreach worker, observes, has reason to believe, or is in receipt of information regarding a suspected violation of employment-related laws or employment service regulations by an employer, except as provided at § 658.419 (field checks) or § 658.411 (complaints), the employee must document the suspected violation and refer this information to the local employment service office manager.

(b) If the employer has filed a job order with the employment service office within the past 12 months, the local employment service office must attempt informal resolution provided at § 658.411.

(c) If the employer has not filed a job order with the local office during the past 12 months, the suspected violation of an employment-related law must be referred to the appropriate enforcement agency in writing.

When a Complaint Rises to the Federal Level

§ 658.420 Responsibilities of the Employment and Training Administration regional office.

(a) Each Regional Administrator must establish and maintain a Complaint System within each ETA regional office.

(b) The Regional Administrator must designate DOL officials to handle employment service regulation-related complaints as follows:

(1) All complaints alleging discrimination by race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, or genetic information, as well as reprisal for protected activity, must be assigned to a Regional Director for Equal Opportunity and Special

Review and, where appropriate, handled in accordance with procedures at 29 CFR part 31.

(2) All complaints other than those described in paragraph (b)(1) of this section, must be assigned to a regional office official designated by the Regional Administrator, provided that the regional office official designated to handle MSFW complaints must be the regional monitor advocate (RMA).

(c) The Regional Administrator must designate DOL officials to handle employment-related law complaints in accordance with § 658.411, provided that the regional official designated to handle MSFW employment-related law complaints must be the RMA.

(d) The Regional Administrator must assure that all complaints and all related documents and correspondence are logged with a notation of the nature of each item.

§ 658.421 Handling of employment service regulation-related complaints.

(a)(1) No complaint alleging a violation of the employment service regulations must be handled at the ETA regional office level until the complainant has exhausted the SWA administrative remedies set forth at §§ 658.411 through 658.418. If the Regional Administrator determines that a complaint has been prematurely filed with an ETA regional office, the Regional Administrator must inform the complainant within 10 working days in writing that the complainant must first exhaust those remedies before the complaint may be filed in the regional office. A copy of this letter and a copy of the complaint must also be sent to the State Administrator.

(2) If the Regional Administrator determines that the nature and scope of a complaint described in paragraph (a) of this section is such that the time required to exhaust the administrative procedures at the SWA level would adversely affect a significant number of individuals, the RA must accept the complaint and take the following action:

(i) If the complaint is filed against an employer, the regional office must handle the complaint in a manner consistent with the requirements imposed upon State agencies by §§ 658.411 and 658.418. A hearing must be offered to the parties once the Regional Administrator makes a determination on the complaint.

(ii) If the complaint is filed against a SWA, the regional office must follow procedures established at § 658.411(d).

(b) The ETA regional office is responsible for handling appeals of determinations made on complaints at the SWA level. An appeal includes any letter or other writing which the Regional Administrator reasonably understands to be requesting review if it is received by the regional office and signed by a party to the complaint.

(c)(1) Once the Regional Administrator receives a timely appeal he/she must request the complete SWA file, including the original Complaint/Referral Form from the appropriate SWA.

(2) The Regional Administrator must review the file in the case and must determine within 10 business days whether any further investigation or action is appropriate; however if the Regional Administrator determines that it needs to request legal advice from the Office of the Solicitor at the U.S. Department of Labor then the Regional Administrator may have 20 business days to make this determination.

(d) If the Regional Administrator determines that no further action is warranted, the Regional Administrator must send his/her determination in writing to the appellant within 5 days of the determination and must offer the appellant a hearing before a DOL Administrative Law Judge (ALJ), provided the appellant requests such a hearing in writing from the Regional Administrator within 20 working days of the certified date of receipt of the Regional Administrator's offer of

hearing.

(e) If the Regional Administrator determines that further investigation or other action is warranted, the Regional Administrator must undertake such an investigation or other action necessary to resolve the complaint.

(f) After taking the actions described in paragraph (e) of this section, the Regional Administrator must either affirm, reverse, or modify the decision of the State hearing official, and must notify each party to the State hearing official's hearing or to whom the State office determination was sent, notice of the determination and notify the parties that they may appeal the determination to the Department of Labor's Office of Administrative Law Judges within 20 business days of the party's receipt of the notice.

(g) If the Regional Administrator finds reason to believe that a SWA or one of its local employment service offices has violated ES regulations, the Regional Administrator must follow the procedures set forth at subpart H of this part.

§ 658.422 Handling of employment-related law complaints by the Regional Administrator.

(a) Each complaint filed by an MSFW alleging violation(s) of employment-related laws must be taken in writing, logged, and referred to the appropriate enforcement agency for prompt action.

(b) Each complaint submitted by a non-MSFW alleging violation(s) of employment-related laws must be referred to the appropriate enforcement agency for prompt action.

(c) Upon referring the complaint in accordance with paragraph (a) of this section, the regional official must inform the complainant of the enforcement agency (and individual, if

known) to which the complaint was referred.

§ 658.424 Proceedings before the Office of Administrative Law Judges.

(a) If a party requests a hearing pursuant to § 658.417 or § 658.707, the Regional Administrator must:

(1) Send the party requesting the hearing and all other parties to the prior State level hearing, a written notice (hard copy or electronic) containing the statements set forth at § 658.418(c);

(2) Compile four hearing files (hard copy or electronic) containing copies of all documents relevant to the case, indexed and compiled chronologically;

(3) Send simultaneously one hearing file to the DOL Chief Administrative Law Judge (ALJ), 800 K Street, NW., suite 400, Washington, DC 20001-8002, one hearing file to the OWI Administrator, and one hearing file to the Solicitor of Labor, Attn: Associate Solicitor for Employment and Training Legal Services, and retain one hearing file.

(b) Proceedings under this section are governed by the rules of practice and procedure at subpart A of 29 CFR part 18, except where as otherwise specified in this section or § 658.425.

(c) Upon the receipt of a hearing file, the ALJ designated to the case must notify the party requesting the hearing, all parties to the prior State hearing official hearing (if any), the State agency, the Regional Administrator, the OWI Administrator, and the Solicitor of Labor of the receipt of the case. After conferring all the parties, the ALJ may decide to make a determination on the record in lieu of scheduling a hearing.

(d) The ALJ may decide to consolidate cases and conduct hearings on more than one

complaint concurrently if he/she determines that the issues are related or that the complaints will be handled more expeditiously.

(e) If the parties to the hearing are located in more than one State or are located in the same State but access to the hearing location is extremely inconvenient for one or more parties as determined by the ALJ, the ALJ must:

(1) Whenever possible, hold a single hearing, at a location convenient to all parties or their representatives wishing to appear and present evidence, with all such parties and/or their representatives present.

(2) If a hearing location cannot be established by the ALJ at a location pursuant to paragraph (e)(1) of this section, the ALJ may conduct, with the consent of the parties, the hearing by a telephone conference call. If the hearing is conducted via telephone conference call the parties and their representatives must have the option to participate in person or via telephone.

(3) Where the ALJ is unable, for any reason, to conduct a telephonic hearing under paragraph (e)(2) of this section, the ALJ must confer with the parties on how to proceed.

(f) Upon deciding to hold a hearing, the ALJ must:

(1) Notify all involved parties of the date, time and place of the hearing; and

(2) Reschedule the hearing, as appropriate.

(g) The parties to the hearing must be afforded the opportunity to present, examine, and cross-examine witnesses. The ALJ may elicit testimony from witnesses, but may not act as advocate for any party.

(h) The ALJ must receive, and make part of the record, documentary evidence offered by

any party and accepted at the hearing, provided that copies of such evidence is provided to the other parties to the proceeding prior to the hearing at the time required by the ALJ and agreed to by the parties.

(i) Technical rules of evidence do not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination must be applied where reasonably necessary by

the ALJ conducting the hearing. The ALJ may exclude irrelevant, immaterial, or unduly repetitious evidence.

(j) The case record, or any portion thereof, must be available for inspection and copying by any party to the hearing at, prior to, or subsequent to the hearing upon request. Special procedures may be used for disclosure of medical and psychological records such as disclosure to a physician designated by the individual concerned.

(k) The ALJ must, if feasible, encourage resolution of the dispute by conciliation at any time prior to the conclusion of the hearing.

§ 658.425 Decision of Department of Labor Administrative Law Judge.

(a) The ALJ may:

(1) Rule that he/she they lacks jurisdiction over the case;

(2) Rule that the appeal has been withdrawn, with the written consent of all parties;

(3) Rule that reasonable cause exists to believe that the appeal has been abandoned; or

(4) Render such other rulings as are appropriate to the issues in question. However, the ALJ does not have jurisdiction to consider the validity or constitutionality of the employment

service regulations or of the Federal statutes under which they are promulgated.

(b) Based on the entire record, including any legal briefs, the record before the State agency, the investigation (if any) and determination of the Regional Administrator, and evidence provided at the hearing, the ALJ must prepare a written decision. The ALJ must send a copy of the decision stating the findings of fact and conclusions of law to the parties to the hearing, including the State agency, the Regional Administrator, the OWI Administrator, and the Solicitor, and to entities filing amicus briefs (if any).

(c) The decision of the ALJ serves as the final decision of the Secretary.

§ 658.426 Complaints against the United States Employment Service.

(a)) Complaints alleging that an ETA regional office or the National Office of the United States Employment Service (USES) has violated ES regulations should be mailed to the Assistant Secretary for Employment and Training, U.S. Department of Labor, Washington, DC 20210. Such complaints should include:

(1) A specific allegation of the violation;

(2) The date of the incident;

(3) Location of the incident;

(4) The individual alleged to have committed the violation; and

(5) Any other relevant information available to the complainant.

(b) The Assistant Secretary or the Regional Administrator as designated must make a determination and respond to the complainant after investigation of the complaint.

Subpart F—Discontinuation of Services to Employers by the Employment Service System

§ 658.500 Scope and purpose of subpart.

This subpart contains the regulations governing the discontinuation of services provided pursuant to 20 CFR part 653 to employers by the USES, including SWAs.

§ 658.501 Basis for discontinuation of services.

(a) The State agency must initiate procedures for discontinuation of services to employers who:

(1) Submit and refuse to alter or withdraw job orders containing specifications which are contrary to employment-related laws;

(2) Submit job orders and refuse to provide assurances, in accordance with the Agricultural Recruitment System U.S. Workers at 20 CFR 653 subpart F, that the jobs offered are in compliance with employment-related laws, or to withdraw such job orders;

(3) Are found through field checks or otherwise to have either misrepresented the terms or conditions of employment specified on job orders or failed to comply fully with assurances made on job orders;

(4) Are found by a final determination by an appropriate enforcement agency to have violated any employment-related laws and notification of this final determination has been provided to the ES by that enforcement agency;

(5) Are found to have violated ES regulations pursuant to § 658.411;

(6) Refuse to accept qualified workers referred through the clearance system;

(7) Refuse to cooperate in the conduct of field checks conducted pursuant to § 653.503; or

(8) Repeatedly cause the initiation of the procedures for discontinuation of services pursuant to paragraphs (a)(1) through (7) of this section.

(b) The SWA may discontinue services immediately if, in the judgment of the State Administrator, exhaustion of the administrative procedures set forth in this subpart in paragraphs (a)(1) through (7) of this section would cause substantial harm to a significant number of workers. In such instances, procedures at §§ 658.503 et seq. must be followed.

(c) If it comes to the attention of a local employment service office or SWA that an employer participating in the employment service system may not have complied with the terms of its temporary labor certification, under, for example the H-2A and H-2B visa programs, State agencies must engage in the procedures for discontinuation of services to employers pursuant to paragraphs (a)(1) through (a)(8) of this section and simultaneously notify the Chicago National Processing Center (CNPC) of the alleged non-compliance for investigation and consideration of ineligibility pursuant to 20 CFR 655.184 or 20 CFR 655.73 respectively for subsequent temporary labor certification.

§ 658.502 Notification to employers.

(a) The SWA must notify the employer in writing that it intends to discontinue the provision of ES services pursuant to 20 CFR parts 652, 653, 654, and 658, and the reason therefore:

(1) Where the decision is based on submittal and refusal to alter or to withdraw job orders

containing specifications contrary to employment-related laws, the SWA must specify the date the order was submitted, the job order involved, the specifications contrary to employment- related laws and the laws involved. The employer must be notified in writing that all ES services will be terminated in 20 working days unless the employer within that time:

(i) Provides adequate evidence that the specifications are not contrary to employment-related laws, or

(ii) Withdraws the specifications and resubmits the job order in compliance with all employment-related laws, or

(iii) If the job is no longer available makes assurances that all future job orders submitted will be in compliance with all employment-related laws, or

(iv) Requests a hearing from the SWA pursuant to § 658.417.

(2) Where the decision is based on the employer's submittal of an order and refusal to provide assurances that the job is in compliance with employment-related laws or to withdraw the order, the SWA must specify the date the order was submitted, the job order involved and the assurances involved. The employer must be notified that all ES services will be terminated within 20 working days unless the employer within that time:

(i) Resubmits the order with the appropriate assurances;

(ii) If the job is no longer available, make assurances that all future job orders submitted will contain all necessary assurances that the job offered is in compliance with employment- related laws; or

(iii) Requests a hearing from the SWA pursuant to § 658.417.

(3) Where the decision is based on a finding that the employer has misrepresented the terms or conditions of employment specified on job orders or failed to comply fully with assurances made on job orders, the State agency must specify the basis for that determination. The employer must be notified that all ES services will be terminated in 20 working days unless the employer within that time:

(i) Provides adequate evidence that terms and conditions of employment were not misrepresented; or

(ii) Provides adequate evidence that there was full compliance with the assurances made on the job orders; or

(iii) Provides resolution of a complaint which is satisfactory to a complainant referred by the ES; and

(iv) Provides adequate assurance that specifications on future orders will accurately represent the terms and conditions of employment and that there will be full compliance with all job order assurances; or

(v) Requests a hearing from the SWA pursuant to § 658.417.

(4) Where the decision is based on a final determination by an enforcement agency, the SWA must specify the enforcement agency's findings of facts and conclusions of law. The employer must be notified that all ES services will be terminated in 20 working days unless the employer within that time:

(i) Provides adequate evidence that the enforcement agency has reversed its ruling and that the employer did not violate employment-related laws; or

(ii) Provides adequate evidence that the appropriate fines have been paid and/or appropriate restitution has been made; and

(iii) Provides assurances that any policies, procedures, or conditions responsible for the violation have been corrected and the same or similar violations are not likely to occur in the future.

(5) Where the decision is based on a finding of a violation of ES regulations under § 658.411, the SWA must specify the finding. The employer must be notified that all ES services will be terminated in 20 working days unless the employer within that time:

(i) Provides adequate evidence that the employer did not violate ES regulations; or

(ii) Provides adequate evidence that appropriate restitution has been made or remedial action taken; and

(iii) Provides assurances that any policies, procedures, or conditions responsible for the violation have been corrected and the same or similar violations are not likely to occur in the future; or

(iv) Requests a hearing from the SWA pursuant to § 658.417.

(6) Where the decision is based on an employer's failure to accept qualified workers referred through the clearance system, the SWA must specify the workers referred and not accepted. The employer must be notified that all ES services will be terminated in 20 working days unless the employer within that time:

(i) Provides adequate evidence that the workers were accepted; or

(ii) Provides adequate evidence that the workers were not available to accept the job; or

(iii) Provides adequate evidence that the workers were not qualified; and

(iv) Provides adequate assurances that qualified workers referred in the future will be accepted; or

(v) Requests a hearing from the SWA pursuant to § 658.417.

(7) Where the decision is based on lack of cooperation in the conduct of field checks, the SWA must specify the lack of cooperation. The employer must be notified that all ES services will be terminated in 20 working days unless the employer within that time:

(i) Provides adequate evidence that he/she did cooperate; or

(ii) Cooperates immediately in the conduct of field checks; and

(iii) Provides assurances that he/she will cooperate in future field checks in further activity; or

(iv) Requests a hearing from the SWA pursuant to § 658.417.

(b) If the employer chooses to respond pursuant to this section by providing documentary evidence or assurances, he/she must at the same time request a hearing if such hearing is desired in the event that the State agency does not accept the documentary evidence or assurances as adequate.

(c)) Where the decision is based on repeated initiation of procedures for discontinuation of services, the employer must be notified that services have been terminated.

(d) If the employer makes a timely request for a hearing, in accordance with this section, the SWA must follow procedures set forth at § 658.411 and notify the complainant whenever the discontinuation of services is based on a complaint pursuant to § 658.411.

§ 658.503 Discontinuation of services.

(a) If the employer does not provide a satisfactory response in accordance with

§ 658.502, within 20 working days, or has not requested a hearing, the SWA must immediately terminate services to the employer.

(b) If services are discontinued to an employer subject to Federal Contractor Job Listing Requirements, the SWA must notify the ETA regional office immediately.

§ 658.504 Reinstatement of services.

(a)) Services may be reinstated to an employer after discontinuation under § 658.502, if:

(1) The State is ordered to do so by a Federal ALJ Judge or Regional Administrator, or

(2)(i) The employer provides adequate evidence that any policies, procedures or

conditions responsible for the previous discontinuation of services have been corrected and that the same or similar circumstances are not likely to occur in the future, and

(ii) The employer provides adequate evidence that he/she has responded adequately to any findings of an enforcement agency, State ES agency, or USES, including restitution to the complainant and the payment of any fines, which were the basis of the discontinuation of services.

(b) The SWA must notify, the employer requesting reinstatement within 20 working days whether his/her request has been granted. If the State denies the request for reinstatement, the basis for the denial must be specified and the employer must be notified that he/she may

request a hearing within 20 working days.

(c) If the employer makes a timely request for a hearing, the SWA must follow the

procedures set forth at § 658.417.

(d) The SWA must reinstate services to an employer if ordered to do so by a State hearing official, Regional Administrator, or Federal ALJ as a result of a hearing offered pursuant to paragraph (c) of this section.

Subpart G—Review and Assessment of State Agency Compliance With Employment Service Regulations

§ 658.600 Scope and purpose of subpart.

This subpart sets forth the regulations governing review and assessment of State Workforce Agency (SWA) compliance with the Employment Service regulations at 20 CFR parts 651, 652, 653, 654, and 658. All recordkeeping and reporting requirements contained in parts 653 and 658 have been approved by the Office of Management and Budget as required by the Federal Reports Act of 1942.

§ 658.601 State agency responsibility.

(a) Each State agency must establish and maintain a self-appraisal system for employment service operations to determine success in reaching goals and to correct deficiencies in performance. The self-appraisal system must include numerical (quantitative) appraisal and non-numerical (qualitative) appraisal.

(1) Numerical appraisal at the local employment service office level must be conducted as follows:

(i) Performance must be measured on a quarterly-basis against planned service levels as stated in the Unified State Plan. The State Plan must be consistent with numerical goals contained in

local employment service office plans.

(ii) To appraise numerical activities/indicators, actual results as shown on the Department's ETA 9002A report, or any successor report required by the Department must be compared to planned levels. Differences between achievement and plan levels must be identified.

(iii) When the numerical appraisal of required activities/indicators identifies significant differences from planned levels, additional analysis must be conducted to isolate possible contributing factors. This data analysis must include, as appropriate, comparisons to past performance, attainment of Unified State Plan goals and consideration of pertinent non- numerical factors.

(iv) Results of local employment service office numerical reviews must be documented and significant deficiencies identified. A corrective action plan as described in paragraph (a)(6) of this section must be developed to address these deficiencies.

(v) The result of local employment service office appraisal, including corrective action plans, must be communicated in writing to the next higher level of authority for review. This review must cover adequacy of analysis, appropriateness of corrective actions, and need for higher level involvement. When this review is conducted at an area or district office, a report describing local employment service office performance within the area or district jurisdiction must be communicated to the SWA on a quarterly basis.

(2) Numerical appraisal at the SWA level must be conducted as follows:

(i) Performance must be measured on a quarterly basis against planned service levels as stated in the Unified State Plan. The State Plan must be consistent with numerical goals contained in local employment service office plans.

(ii) To appraise these key numerical activities/indicators, actual results as shown on the ETA 9002A report, or any successor report required by DOL must be compared to planned levels. Differences between achievement and plan levels must be identified.

(iii) The SWA must review statewide data, and performance against planned service levels as stated in the Unified State Plan on at least a quarterly basis to identify significant statewide deficiencies and to determine the need for additional analysis, including identification of trends, comparisons to past performance, and attainment of Unified State Plan goals.

(iv) Results of numerical reviews must be documented and significant deficiencies identified. A corrective action plan as described in paragraph (a)(5) of this section must be developed to address these deficiencies. These plans must be submitted to the ETA Regional Office as part of the periodic performance process described at § 658.603(d)(2).

(3) Non-numerical (qualitative) appraisal of local employment service office activities must be conducted at least annually as follows:

(i) Each local employment service office must assess the quality of its services to applicants, employers, and the community and its compliance with Federal regulations.

(ii) At a minimum, non-numerical review must include an assessment of the following factors:

(A) Appropriateness of services provided to participants and employers;

(B) Timely delivery of services to participants and employers;

(C) Staff responsiveness to individual participants and employer needs;

(D) Thoroughness and accuracy of documents prepared in the course of service delivery; and

(E) Effectiveness of ES interface with external organizations, i.e., other ETA-funded programs, community groups, etc.

(iii) Non-numerical review methods must include:

(A) Observation of processes;

(B)) Review of documents used in service provisions; and

(C) Solicitation of input from applicants, employers, and the community.

(iv) The result of non-numerical reviews must be documented and deficiencies identified. A corrective action plan that addresses these deficiencies as described in paragraph (a)(6) of this section must be developed.

(v) The result of local employment service office non-numerical appraisal, including corrective actions, must be communicated in writing to the next higher level of authority for review. This review must cover thoroughness and adequacy of local employment service office appraisal, appropriateness of corrective actions, and need for higher level involvement. When this review is conducted at an area or district level, a report summarizing local employment service office performance within that jurisdiction must be communicated to the SWA on an annual basis.

(4) As part of its oversight responsibilities, the SWA must conduct onsite reviews in those local employment service offices which show continuing internal problems or deficiencies in performance as indicated by such sources as data analysis, non-numerical appraisal, or other sources of information.

(5) Non-numerical (qualitative) review of SWA employment service activities must be conducted as follows:

(i) SWA operations must be assessed annually to determine compliance with Federal regulations.

(ii) Results of non-numerical reviews must be documented and deficiencies identified. A corrective action plan that addresses these deficiencies must be developed.

(6) Corrective action plans developed to address deficiencies uncovered at any administrative level within the State as a result of the self-appraisal process must include:

(i) Specific descriptions of the type of action to be taken, the time frame involved and the assignment of responsibility.

(ii) Provision for the delivery of technical assistance as needed.

(iii) A plan to conduct follow-up on a timely basis to determine if action taken to correct the deficiencies has been effective.

(7)(i) The provisions of the ES regulations which require numerical and non-numerical assessment of service to special applicant groups, e.g., services to veterans at 20 CFR part 1001—Services for Veterans and services to MSFWs at 20 CFR 653 and 658, are supplementary to the provisions of this section.

(ii) Each State Administrator and local employment service office manager must ensure that their staff know and carry out ES regulations, including regulations on performance standards and program emphases, and any corrective action plans imposed by the SWA or by the Department.

(iii) Each State Administrator must ensure that the SWA complies with its approved Unified State Plan.

(iv) Each State Administrator must ensure to the maximum extent feasible the accuracy of data entered by the SWA into Department-required management information systems. Each SWA must establish and maintain a data validation system pursuant to Department instructions. The system must review every local employment service office at least once every 4 years. The system must include the validation of time distribution reports and the review of data gathering procedures.

§ 658.602 Employment and Training Administration National Office responsibility.

The ETA National Office must:

(a)) Monitor ETA Regional Offices' operations under ES regulations;

(b) From time to time, conduct such special reviews and audits as necessary to monitor ETA regional office and SWA compliance with ES regulations;

(c)) Offer technical assistance to the ETA regional offices and SWAs in carrying out ES regulations and programs;

(d) Have report validation surveys conducted in support of resource allocations;

(e)) Develop tools and techniques for reviewing and assessing SWA performance and compliance with ES regulations.

(f) ETA must appoint a national monitor advocate (NMA), who must devote full time to the duties set forth in this subpart. The NMA must:

(1) Review the effective functioning of the Regional monitor advocates (RMAs) and SMAs;

(2) Review the performance of SWAs in providing the full range of ES services to

MSFWs;

(3) Take steps to resolve or refer ES-related problems of MSFWs which come to his/her attention;

(4) Take steps to refer non ES-related problems of MSFWs which come to his/her attention;

(5) Recommend to the Administrator changes in policy toward MSFWs; and

(6) Serve as an advocate to improve services for MSFWs within the employment service system. The NMA must be a member of the National Farm Labor Coordinated Enforcement Staff Level Working Committee and/or other OSHA and WHD task forces, and/or other committees as appropriate.

(g) The NMA must be appointed by the Office of Workforce Investment Administrator (Administrator) after informing farmworker organizations and other organizations with expertise concerning MSFWs of the opening and encouraging them to refer qualified applicants to apply through the Federal merit system. Among qualified candidates, determined through merit systems procedures, individuals must be sought who meet the criteria used in the selection of the SMAs, as provided in 20 CFR 653.108(b).

(h) The NMA must be assigned staff necessary to fulfill effectively all the responsibilities set forth in this subpart.

(i) The NMA must submit an annual report (Annual Report) to the OWI Administrator, the ETA Assistant Secretary, and the National Farm Labor Coordinated Enforcement Committee covering the matters set forth in this subpart.

(j) The NMA must monitor and assess SWA compliance with ES regulations affecting MSFWs on a continuing basis. His/her assessment must consider:

(1) Information from RMAs and SMAs;

(2) Program performance data, including the service indicators;

(3) Periodic reports from regional offices;

(4) All Federal on-site reviews;

(5) Selected State on-site reviews;

(6) Other relevant reports prepared by USES;

(7) Information received from farmworker organizations and employers; and

(8) His/her personal observations from visits to State ES offices, agricultural work sites and migrant camps. In the annual report, the NMA must include both a quantitative and qualitative analysis of his/her findings and the implementation of his/her recommendations by State and Federal officials, and must address the information obtained from all of the foregoing sources.

(k) The NMA must review the activities of the State/Federal monitoring system as it applies to services to MSFWs and the Complaint System including the effectiveness of the regional monitoring function in each region and must recommend any appropriate changes in the operation of the system. The NMA's findings and recommendations must be fully set forth in the annual report.

(l) If the NMA finds that the effectiveness of any RMA has been substantially impeded by the Regional Administrator or other Regional Office official, he/she must, if unable to resolve such problems informally, report and recommend appropriate actions directly to the OWI Administrator. If the NMA receives information that the effectiveness of any SMA has been substantially impeded

by the State Administrator or other State or Federal ES official, he/she must, in the absence of a satisfactory informal resolution at the regional level, report and recommend appropriate actions directly to the OWI Administrator.

(m) The NMA must be informed of all proposed changes in policy and practice within USES, including ES regulations, which may affect the delivery of services to MSFWs. The NMA must advise the Administrator concerning all such proposed changes which may adversely affect MSFWs. The NMA must propose directly to the OWI Administrator changes in ES policy and administration which may substantially improve the delivery of services to MSFWs. He/she must also recommend changes in the funding of SWAs and/or adjustment or reallocation of the discretionary portions of funding formulae.

(n) The NMA must participate in the review and assessment activities required in this section and §§ 658.700 et seq. As part of such participation, the NMA, or if he/she is unable to participate a RMA must accompany the National Office review team on National Office on-site reviews. The NMA must engage in the following activities in the course of each State on-site review:

(1) He/she must accompany selected outreach workers on their field visits.

(2) He/she must participate in a random field check[s] of migrant camps or work site[s] where MSFWs have been placed on inter or intrastate clearance orders.

(3) He/she must contact local WIOA sec. 167 National Farmworker Jobs Program grantees or other farmworker organizations as part of the on-site review, and, discuss with representatives of these organizations current trends and any other pertinent information concerning MSFWs.

(4) He/she must meet with the SMA and discuss the full range of the ES services to MSFWs, including monitoring and the Complaint System.

(o) In addition to the duties specified in paragraph (f)(8) of this section, the NMA each year during the harvest season must visit the four States with the highest level of MSFW activity

during the prior fiscal year, if they are not scheduled for a National Office on-site review during the current fiscal year, and must:

(1) Meet with the SMA and other SWA staff to discuss MSFW service delivery, and

(2) Contact representatives of MSFW organizations and interested employer organizations to obtain information concerning ES service delivery and coordination with other agencies.

(p) The NMA must perform duties specified in §§ 658.700 et seq. As part of this function, he/she must monitor the performance of regional offices in imposing corrective action. The NMA must report any deficiencies in performance to the Administrator.

(q) The NMA must establish routine and regular contacts with WIOA sec. 167 National Farmworker Jobs Program grantees, other farmworker organizations and agricultural employers and/or employer organizations. He/she must attend conferences or meetings of these groups wherever possible and must report to the Administrator and the National Farm Labor Coordinated Enforcement Committee on these contacts when appropriate. The NMA must include in the annual report recommendations as to how the Department might better coordinate ES and WIOA sec. 167 National Farmworker Jobs Program services as they pertain to MSFWs.

(r) In the event that any SMA or RMA, enforcement agency or MSFW group refers a matter to the NMA which requires emergency action, he/she must assist them in obtaining action by

appropriate agencies and staff, inform the originating party of the action taken, and, upon request, provide written confirmation.

(s) Through all the mechanisms provided in this subpart, the NMA must aggressively seek to ascertain and remedy, if possible, systemic deficiencies in the provisions of ES services and protections afforded by these regulations to MSFWs. The NMA must:

(1) Use the regular reports on complaints submitted by SWAs and ETA regional offices to assess the adequacy of these systems and to determine the existence of systemic deficiencies.

(2) Provide technical assistance to ETA regional office and State agency staff for administering the Complaint System, and any other ES services as appropriate.

(3) Recommend to the Administrator specific instructions for action by regional office staff to correct any ES-related systemic deficiencies. Prior to any ETA review of regional office operations concerning ES services to MSFWs, the NMA must provide to the Administrator a brief summary of ES-related services to MSFWs in that region and his/her recommendations for incorporation in the regional review materials as the Administrator and ETA reviewing organization deem appropriate.

(4) Recommend to the National Farm Labor Coordinated Enforcement Committee specific instructions for action by WHD and OSHA regional office staff to correct any non-ES-related systemic deficiencies of which he/she is aware.

§ 658.603 Employment and Training Administration regional office responsibility.

(a) The Regional Administrator must have responsibility for the regular review and

assessment of SWA performance and compliance with ES regulations.

(b) The Regional Administrator must participate with the National Office staff in reviewing and approving the Unified State Plan for the SWAs within the region. In reviewing the Unified State Plans the Regional Administrator and appropriate National Office staff must consider relevant factors including the following:

(1) State agency compliance with ES regulations;

(2) State agency performance against the goals and objectives established in the previous Unified State Plan;

(3) The effect which economic conditions and other external factors considered by the ETA in the resource allocation process may have had or are expected to have on the SWA's performance;

(4) State agency adherence to national program emphasis; and

(5) The adequacy and appropriateness of the Unified State Plan for carrying out ES programs.

(c) The Regional Administrator must assess the overall performance of SWAs on an ongoing basis through desk reviews and the use of required reporting systems and other available information.

(d) As appropriate, Regional Administrators must conduct or have conducted:

(1) Comprehensive on-site reviews of SWAs and their offices to review SWA organization, management, and program operations;

(2) Periodic performance reviews of SWA operation of ES programs to measure actual

performance against the Unified State Plan, past performance, the performance of other SWAs, etc.;

(3) Audits of SWA programs to review their program activity and to assess whether the expenditure of grant funds has been in accordance with the approved budget. Regional Administrators may also conduct audits through other agencies or organizations or may require the SWA to have audits conducted;

(4) Validations of data entered into management information systems to assess:

(i) The accuracy of data entered by the SWAs into the management information system;

(ii) Whether the SWAs' data validating and reviewing procedures conform to Department instructions; and

(iii) Whether SWAs have implemented any corrective action plans required by the Department to remedy deficiencies in their validation programs;

(5) Technical assistance programs to assist SWAs in carrying out ES regulations and programs;

(6) Reviews to assess whether the SWA has complied with corrective action plans imposed by the Department or by the SWA itself; and

(7) Random, unannounced field checks of a sample of agricultural work sites to which ES placements have been made through the clearance system to determine and document whether wages, hours, working and housing conditions are as specified on the job order. If regional office staff find reason to believe that conditions vary from job order specifications, findings should be documented on the ES Complaint Referral Form and provided to the State agency to be handled as a complaint

under § 658.411.

(e) The Regional Administrator must provide technical assistance to SWAs to assist them in carrying out ES regulations and programs.

(f) The Regional Administrator must appoint a RMA who must devote full time to the duties set forth in this subpart. The RMA must:

(1) Review the effective functioning of the SMAs in his/her region;

(2) Review the performance of SWAs in providing the full range of ES services to MSFWs;

(3) Take steps to resolve ES-related problems of MSFWs which come to his/her attention;

(4) Recommend to the Regional Administrator changes in policy towards MSFWs;

(5) Review the operation of the Complaint System; and

(6) Serve as an advocate to improve service for MSFWs within the ES system. The RMA must be a member of the Regional Farm Labor Coordinated Enforcement Committee.

(g) The RMA must be appointed by the Regional Administrator after informing farmworker organizations and other organizations in the region with expertise concerning MSFWs of the opening and encouraging them to refer qualified applicants to apply through the Federal merit system. The RMA must have direct personal access to the Regional Administrator wherever he/she finds it necessary. Among qualified candidates, individuals must be sought who meet the criteria used in the selection of the SMAs, as provided in 20 CFR 653.108(b).

(h) The Regional Administrator must ensure that staff necessary to fulfill effectively all

the regional office responsibilities set forth in this section are assigned. The RMA must notify the Regional Administrator of any staffing deficiencies and the Regional Administrator must take appropriate action.

(i) The RMA within the first 3 months of their tenure must participate in a training session(s) approved by the National Office.

(j) At the regional level, the RMA must have primary responsibility for:

(1) Monitoring the effectiveness of the Complaint System set forth at subpart E of this part;

(2) Apprising appropriate State and ETA officials of deficiencies in the Complaint System; and

(3) Providing technical assistance to SMAs in the region.

(k) At the ETA regional level, the RMA must have primary responsibility for ensuring that SWA compliance with ES regulations as they pertain to services to MSFWs is monitored by

the regional office. He/she must independently assess on a continuing basis the provision of ES services to MSFWs, seeking out and using:

(1) Information from SMAs, including all reports and other documents;

(2) Program performance data;

(3) The periodic and other required reports from State ES offices;

(4) Federal on-site reviews;

(5) Other reports prepared by the National Office;

(6) Information received from farmworker organizations and employers; and

(7) Any other pertinent information which comes to his/her attention from any possible source.

(8) In addition, the RMA must consider his/her personal observations from visits to ES offices, agricultural work sites and migrant camps.

(l) The RMA must assist the Regional Administrator and other appropriate line officials in applying appropriate corrective and remedial actions to State agencies.

(m) The Regional Administrator's quarterly report to the National Office must include the RMA's summary of his/her independent assessment as required in paragraph (f)(5) of this section. The fourth quarter summary must include an annual summary from the region. The summary also must include both a quantitative and a qualitative analysis of his/her reviews and must address all the matters with respect to which he/she has responsibilities under these regulations.

(n) The RMA must review the activities and performance of the SMAs and the State monitoring system in the region, and must recommend any appropriate changes in the operation of the system to the Regional Administrator. The RMA's review must include a determination whether the SMA:

(1) Does not have adequate access to information;

(2) Is being impeded in fulfilling his/her duties; or

(3) Is making recommendations which are being consistently ignored by SWA officials. If the RMA believes that the effectiveness of any SMA has been substantially impeded by the State Administrator, other State agency officials, or any Federal officials, he/she must report and

recommend appropriate actions to the Regional Administrator. Copies of the recommendations must be provided to the NMA electronically or in hard copy.

(o) The RMA must be informed of all proposed changes in policy and practice within USES, including ES regulations, which may affect the delivery of services to MSFWs. He/she must advise the Regional Administrator on all such proposed changes which, in his/her opinion, may adversely affect MSFWs or which may substantially improve the delivery of services to MSFWs. The RMA may also recommend changes in ES policy or regulations, as well as changes in the funding of State agencies and/or adjustments of reallocation of the discretionary portions of funding formulae as they pertain to MSFWs.

(p) The RMA must participate in the review and assessment activities required in this section and 20 CFR part 658.700 et seq. He/she, an assistant, or another RMA, must participate in National Office and regional office on-site statewide reviews of ES services to MSFWs in States in the region. The RMA must engage in the following activities in the course of participating in an on-site SWA review:

(1) He/she must accompany selected outreach workers on their field visits;

(2) He/she must participate in a random field check of migrant camps or work sites where MSFWs have been placed on intrastate or interstate clearance orders;

(3) He/she must contact local WIOA sec. 167 National Farmworker Jobs Program grantees or other farmworker organizations as part of the on-site review, and must discuss with representatives of these organizations perceived trends, and/or other relevant information concerning MSFWs in the area; and

(4) He/she must meet with the SMA and discuss the full range of the ES services to

MSFWs, including monitoring and the Complaint System.

(q) During the calendar quarter preceding the time of peak MSFW activity in each State, the RMA must meet with the SMA and must review in detail the State agency's capability for providing full services to MSFWs as required by ES regulations, during the upcoming harvest season. The RMA must offer technical assistance and recommend to the SWA and/or the Regional Administrator any changes in State policy or practice that he/she finds necessary.

(r) The RMA each year during the peak harvest season must visit each State in the region not scheduled for an on-site review during that fiscal year and must:

(1) Meet with the SMA and other SWA staff to discuss MSFW service delivery; and

(2) Contact representatives of MSFW organizations to obtain information concerning ES service delivery and coordination with other agencies and interested employer organizations.

(s) The RMA must initiate and maintain regular and personal contacts, including informal contacts in addition to those specifically required by these regulations, with SMA in the region. In addition, the RMA must have personal and regular contact with the NMA. The RMA must also establish routine and regular contacts with WIOA sec. 167 National Farmworker Jobs

Program grantees, other farmworker organizations and agricultural employers and/or employer organizations in his/her region. He/she must attend conferences or meetings of these groups wherever possible and must report to the Regional Administrator and the Regional Farm Labor Coordinated Enforcement Committee on these contacts when appropriate. He/she must also make recommendations as to how the Department might better coordinate ES and WIOA sec. 167 National Farmworker Jobs Program services to MSFWs.

(t) The RMA must attend MSFW-related public meeting(s) conducted in the region. Following such meetings or hearings, the RMA must take such steps or make such recommendations to the Regional Administrator, as he/she deems necessary to remedy problem(s) or condition(s) identified or described therein.

(u) The RMA must attempt to achieve regional solutions to any problems, deficiencies or improper practices concerning services to MSFWs which are regional in scope. Further, he/she must recommend policies, offer technical assistance or take any other necessary steps as he/she deems desirable or appropriate on a regional, rather than State-by-State basis, to promote region- wide improvement in the delivery of employment services to MSFWs. He/she must facilitate region-wide coordination and communication regarding provision of ES services to MSFWs among SMAs, State Administrators and Federal ETA officials to the greatest extent possible. In the event that any SWA or other RMA, enforcement agency, or MSFW group refers a matter to the RMA which requires emergency action, he/she must assist them in obtaining action by appropriate agencies and staff, inform the originating party of the action taken, and, upon request, provide written confirmation.

(v) The RMA must initiate and maintain such contacts as he/she deems necessary with RMAs in other regions to seek to resolve problems concerning MSFWs who work, live or travel through the region. He/she must recommend to the Regional Administrator and/or the National Office inter-regional cooperation on any particular matter, problem, or policy with respect to which inter-regional action is desirable.

(w) The RMA must establish regular contacts with the regional agricultural coordinators from WHD and OSHA and any other regional staff from other Federal enforcement agencies and, must establish contacts with the staff of other Department agencies represented on the Regional Farm Labor Coordinated Enforcement Committee, and to the extent necessary, on other pertinent task

forces or committees.

(x) The RMA must participate in the regional reviews of the Unified State Plans, and must comment to the Regional Administrator as to the SWA compliance with the ES regulations as they pertain to services to MSFWs, including the staffing of employment service offices.

§ 658.604 Assessment and evaluation of program performance data.

(a)) State agencies must compile program performance data required by the Department, including statistical information on program operations.

(b) The Department must use the program performance data in assessing and evaluating whether each SWA has complied with ES regulations and its Unified State Plan.

(c) In assessing and evaluating program performance data, the Department must act in accordance with the following general principles:

(1) The fact that the program performance data from a SWA, whether overall or relative to a particular program activity, indicate poor program performance does not by itself constitute a violation of ES regulations or of the State agency's responsibilities under its Unified State Plan;

(2) Program performance data, however, may so strongly indicate that a SWA's performance is so poor that the data may raise a presumption (prima facie case) that a SWA is

violating ES regulations or the Unified State Plan. A SWA's failure to meet the operational objectives set forth in the Unified State Plan raises a presumption that the agency is violating ES regulations and/or obligations under its Unified State Plan. In such cases the Department must afford the SWA an opportunity to rebut the presumption of a violation pursuant to the procedures at subpart H of this part.

(3) The Department must take into account that certain program performance data may measure items over which SWAs have direct or substantial control while other data may measure items over which the SWA has indirect or minimal control.

(i) Generally, for example, a SWA has direct and substantial control over the delivery of employment services such as referrals to jobs, job development contacts, counseling, referrals to career and supportive services and the conduct of field checks.

(ii) State Workforce Agencies, however, have only indirect control over the outcome of services. For example, SWAs cannot guarantee that an employer will hire a referred applicant, nor can they guarantee that the terms and conditions of employment will be as stated on a job order.

(iii) Outside forces, such as a sudden heavy increase in unemployment rates, a strike by SWA employees, or a severe drought or flood may skew the results measured by program performance data.

(4) The Department must consider a SWA's failure to keep accurate and complete program performance data required by ES regulations as a violation of the ES regulations.

§ 658.605 Communication of findings to State agencies.

(a) The Regional Administrator must inform SWAs in writing of the results of review and assessment activities and, as appropriate, must discuss with the State Administrator the impact or action required by the Department as a result of review and assessment activities.

(b) The ETA National Office must transmit the results of any review and assessment activities it conducted to the Regional Administrator who must send the information to the SWA.

(c)) Whenever the review and assessment indicates a SWA violation of ES regulations or its Unified State Plan, the Regional Administrator must follow the procedures set forth at subpart H

of this part.

(d) Regional Administrators must follow-up any corrective action plan imposed on a SWA under subpart H of this part by further review and assessment of the State agency pursuant to this subpart.

Subpart H—Federal Application of Remedial Action to State Agencies

§ 658.700 Scope and purpose of subpart.

This subpart sets forth the procedures which the Department must follow upon either discovering independently or receiving from other(s) information indicating that SWAs may not be adhering to ES regulations.

§ 658.701 Statements of policy.

(a) It is the policy of the Department to take all necessary action, including the imposition of the full range of sanctions set forth in this subpart, to ensure that State agencies comply with all requirements established by ES regulations.

(b) It is the policy of the Department to initiate decertification procedures against SWAs in instances of serious or continual violations of ES regulations if less stringent remedial actions taken in accordance with this subpart fail to resolve noncompliance.

(c) It is the policy of the Department to act on information concerning alleged violations by SWAs of the ES regulations received from any person or organization.

§ 658.702 Initial action by the Regional Administrator.

(a) The ETA Regional Administrator is responsible for ensuring that all SWAs in his/her region are in compliance with ES regulations.

(b) Wherever a Regional Administrator discovers or is apprised of possible SWA violations of ES regulations by the review and assessment activities under subpart G of this part, or through required reports or written complaints from individuals, organizations or employers which are elevated to the Department after the exhaustion of SWA administrative remedies, the Regional Administrator must conduct an investigation. Within 10 days after receipt of the report or other information, the Regional Administrator must make a determination whether there is probable cause to believe that a SWA has violated ES regulations.

(c) The Regional Administrator must accept complaints regarding possible SWA violations of ES regulations from employee organizations, employers or other groups, without exhaustion of the complaint process described at subpart E, if the Regional Administrator determines that the nature and scope of the complaint are such that the time required to exhaust the administrative procedures at the State level would adversely affect a significant number of applicants. In such cases, the Regional Administrator must investigate the matter within 10 working days, may provide the SWA 10 working days for comment, and must make a

determination within an additional 10 working days whether there is probable cause to believe that the SWA has violated ES regulations.

(d) If the Regional Administrator determines that there is no probable cause to believe that a SWA has violated ES regulations, he/she must retain all reports and supporting information in Department files. In all cases where the Regional Administrator has insufficient information to make a probable cause determination, he/she must so notify the Administrator in writing and the

time for the investigation must be extended 20 additional working days.

(e) If the Regional Administrator determines that there is probable cause to believe that a SWA has violated ES regulations, he/she must issue a Notice of Initial Findings of Non- compliance by registered mail (or other legally viable means) to the offending SWA. The notice will specify the nature of the violation, cite the regulations involved, and indicate corrective action which may be imposed in accordance with paragraphs (g) and (h) of this section. If the non-compliance involves services to MSFWs or the Complaint System, a copy of said notice must be sent to the NMA.

(f)(1) The SWA may have 20 working days to comment on the findings, or a longer period, up to 20 additional days, if the Regional Administrator determines that a longer period is appropriate. The SWA's comments must include agreement or disagreement with the findings and suggested corrective actions, where appropriate.

(2) After the period elapses, the Regional Administrator must prepare within 20 working days, written final findings which specify whether or not the SWA has violated ES regulations. If in the final findings the Regional Administrator determines that the SWA has not violated ES regulations, the Regional Administrator must notify the State Administrator of this finding and retain supporting documents in his/her files. If the final finding involves services to MSFWs or the Complaint System, the Regional Administrator must also notify the NMA. If the Regional Administrator determines that a SWA has violated ES regulations, the Regional Administrator must prepare a Final Notice of Noncompliance which must specify the violation(s) and cite the regulations involved. The Final Notice of Noncompliance must be sent to the SWA by registered mail or other legally viable means. If the noncompliance involves services to MSFWs or the Complaint System, a copy of the Final Notice must be sent to the NMA.

(g) If the violation involves the misspending of grant funds, the Regional Administrator

may order in the Final Notice of Noncompliance a disallowance of the expenditure and may either demand repayment or withhold future funds in the amount in question. If the Regional Administrator disallows costs, the Regional Administrator must give the reasons for the disallowance, inform the SWA that the disallowance is effective immediately and that no more funds may be spent in the disallowed manner, and offer the SWA the opportunity to request a hearing pursuant to § 658.707. The offer, or the acceptance of an offer of a hearing, however, does not stay the effectiveness of the disallowance. The Regional Administrator must keep complete records of the disallowance.

(h) If the violation does not involve misspending of grant funds or the Regional Administrator determines that the circumstances warrant other action:

(1) The Final Notice of Noncompliance must direct the SWA to implement a specific corrective action plan to correct all violations. If the SWA's comment demonstrates with supporting evidence (except where inappropriate) that all violations have already been corrected, the Regional Administrator need not impose a corrective action plan and instead may cite the violation(s) and accept their resolution, subject to follow-up review, if necessary. If the Regional Administrator determines that the violation(s) cited had been found previously and that the corrective action(s) taken had not corrected the violation(s) contrary to the findings of previous follow-up reviews, the Regional Administrator must apply remedial actions to the SWA pursuant to § 658.704.

(2) The Final Notice of Noncompliance must specify the time by which each corrective action must be taken. This period may not exceed 40 working days unless the Regional Administrator determines that exceptional circumstances necessitate corrective actions requiring a longer time period. In such cases, and if the violations involve services to MSFWs or the Complaint System, the Regional Administrator must notify the Administrator in writing of the exceptional circumstances which necessitate a longer time period, and must specify that time

period. The specified time period must commence with the date of signature on the registered mail receipt.

(3) When the time period provided for in paragraph (h)(2) of this section elapses, Department staff must review the SWA's efforts as documented by the SWA to determine if the corrective action(s) has been taken and if the SWA has achieved compliance with ES regulations. If necessary, Department staff must conduct a follow-up visit as part of this review.

(4) If, as a result of this review, the Regional Administrator determines that the SWA has corrected the violation(s), the Regional Administrator must record the basis for this determination, notify the SWA, send a copy to the Administrator, and retain a copy in Department files.

(5) If, as a result of this review, the Regional Administrator determines that the SWA has taken corrective action but is unable to determine if the violation has been corrected due to seasonality or other factors, the Regional Administrator must notify in writing the SWA and the Administrator of his/her findings. The Regional Administrator must conduct further follow-up at an appropriate time to make a final determination if the violation has been corrected. If the Regional Administrator's further follow-up reveals that violations have not been corrected, the Regional Administrator must apply remedial actions to the SWA pursuant to § 658.704.

(6) If, as a result of the review the Regional Administrator determines that the SWA has not corrected the violations and has not made good faith efforts and adequate progress toward the correction of the violations, the Regional Administrator must apply remedial actions to the SWA pursuant to § 658.704.

(7) If, as a result of the review, the Regional Administrator determines that the SWA has made good faith efforts and adequate progress toward the correction of the violation and it appears that the violation will be fully corrected within a reasonable time period, the SWA must be advised

by registered mail or other legally viable means (with a copy sent to the Administrator) of this conclusion, of remaining differences, of further needed corrective action, and that all deficiencies must be corrected within a specified time period. This period may not exceed 40 working days unless the Regional Administrator determines that exceptional circumstances necessitate corrective action requiring a longer time period. In such cases, the Regional Administrator must notify the Administrator in writing of the exceptional circumstances which necessitate a longer time period, and must specify that time period. The specified time period commences with the date of signature on the registered mail receipt.

(8)(i) If the SWA has been given an additional time period pursuant to paragraph (h)(7) of this section, Department staff must review the SWA's efforts as documented by the SWA at the end of the time period. If necessary, the Department must conduct a follow-up visit as part of this review.

(ii) If the SWA has corrected the violation(s), the Regional Administrator must document that finding, notify in writing the SWA and the Administrator, and retain supporting documents in Department files. If the SWA has not corrected the violation(s), the Regional Administrator must apply remedial actions pursuant to § 658.704.

§ 658.703 Emergency corrective action.

In critical situations as determined by the Regional Administrator, where it is necessary to protect the integrity of the funds, or insure the proper operation of the program, the Regional Administrator may impose immediate corrective action. Where immediate corrective action is imposed, the Regional Administrator must notify the SWA of the reason for imposing the emergency corrective action prior to providing the SWA an opportunity to comment.

§ 658.704 Remedial actions.

(a) If a SWA fails to correct violations as determined pursuant to § 658.702, the Regional Administrator must apply one or more of the following remedial actions to the SWA:

(1) Imposition of special reporting requirements for a specified period of time;

(2) Restrictions of obligational authority within one or more expense classifications;

(3) Implementation of specific operating systems or procedures for a specified time;

(4) Requirement of special training for SWA personnel;

(5) With the approval of the Assistant Secretary and after affording the State Administrator the opportunity to request a conference with the Assistant Secretary, the elevation of specific decision-making functions from the State Administrator to the Regional Administrator;

(6) With the approval of the Assistant Secretary and after affording the State Administrator the opportunity to request a conference with the Assistant Secretary, the imposition of Federal staff in key State agency positions;

(7) With the approval of the Assistant Secretary and after affording the State Administrator the opportunity to request a conference with the Assistant Secretary, funding of the State agency on a short-term basis or partial withholding of funds for a specific function or for a specific geographical area;

(8) Holding of public hearings in the State on the SWA's deficiencies;

(9) Disallowance of funds pursuant to § 658.702 (g); or

(10) If the matter involves a serious or continual violation, the initiation of decertification

procedures against the State agency, as set forth in paragraph (e) of this section.

(b) The Regional Administrator must send, by registered mail, a Notice of Remedial Action to the SWA. The Notice of Remedial Action must set forth the reasons for the remedial action. When such a notice is the result of violations of regulations governing services to MSFWs (20 CFR 653.100 et seq.) or the Complaint System (§§ 658.400 et seq.), a copy of said notice must be sent to the Administrator, who must publish the notice promptly in the Federal Register.

(c) If the remedial action is other than decertification, the notice must state that the remedial action must take effect immediately. The notice must also state that the SWA may request a hearing pursuant to § 658.707 by filing a request in writing with the Regional Administrator pursuant to § 658.707 within 20 working days of the SWA's receipt of the notice. The offer of hearing, or the acceptance thereof, however, does not stay or otherwise delay the implementation of remedial action.

(d) Within 60 working days after the initial application of remedial action, the Regional Administrator must conduct a review of the SWA's compliance with ES regulations unless the Regional Administrator determines that a longer time period is necessary. In such cases, the Regional Administrator must notify the Administrator in writing of the circumstances which necessitate a longer time period, and specify that time period. If necessary, Department staff must conduct a follow-up visit as part of this review. If the SWA is in compliance with the ES regulations, the Regional Administrator must fully document these facts and must terminate the remedial actions. The Regional Administrator must notify the SWA of his/her findings. When the case involves violations of regulations governing services to MSFWs or the Complaint System, a copy of said notice must be sent to the Administrator, who must promptly publish the notice in the Federal Register. The Regional Administrator must conduct, within a reasonable

time after terminating the remedial actions, a review of the SWA's compliance to determine whether any remedial actions should be reapplied.

(e) If, upon conducting the on-site review referred to in paragraph (c) of this section, the Regional Administrator finds that the SWA remains in noncompliance, the Regional Administrator must continue the remedial action and/or impose different additional remedial actions. The Regional Administrator must fully document all such decisions and, when the case involves violations of regulations governing services to MSFWs or the Complaint System, must send copies to the Administrator, who must promptly publish the notice in the Federal Register.

(f)(1) If the SWA has not brought itself into compliance with ES regulations within 120 working days of the initial application of remedial action, the Regional Administrator must initiate decertification unless the Regional Administrator determines that circumstances

necessitate continuing remedial action for a longer period of time. In such cases, the Regional

Administrator must notify the Administrator in writing of the circumstances which necessitate the longer time period, and specify the time period.

(2) The Regional Administrator must notify the SWA by registered mail or by other legally viable means of the decertification proceedings, and must state the reasons therefor. Whenever such a notice is sent to a State agency, the Regional Administrator must prepare five copies (hard copies or electronic copies) containing, in chronological order, all the documents pertinent to the case along with a request for decertification stating the grounds therefor. One copy must be retained. Two must be sent to the ETA National Office, one must be sent to the Solicitor of Labor, Attention: Associate Solicitor for Employment and Training, and, if the case involves violations of regulations governing services to MSFWs or the Complaint System, one copy must be sent to the NMA. All copies must also be sent electronically to each respective party. The notice sent by the Regional Administrator

must be published promptly in the Federal Register.

§ 658.705 Decision to decertify.

(a)) Within 30 working days of receiving a request for decertification, the ETA Assistant Secretary must review the case and must decide whether to proceed with decertification.

(b) The Assistant Secretary must grant the request for decertification unless he/she makes a finding that:

(1) The violations of ES regulations are neither serious nor continual;

(2) The State agency is in compliance; or

(3) The Assistant Secretary has reason to believe that the SWA will achieve compliance within 80 working days unless exceptional circumstances necessitate a longer time period, pursuant to the remedial action already applied or to be applied. (In the event the Assistant

Secretary does not have sufficient information to act upon the request, he/she may postpone the determination for up to an additional 20 working days in order to obtain any available additional information.) In making a determination of whether violations are "serious" or "continual," as required by paragraph (b)(1) of this section, the Assistant Secretary must consider:

(i) Statewide or multiple deficiencies as shown by performance data and/or on-site reviews;

(ii) Recurrent violations, even if they do not persist over consecutive reporting periods, and

(iii) The good faith efforts of the State to achieve full compliance with ES regulations as shown by the record.

(c) If the Assistant Secretary denies a request for decertification, he/she must write a complete report documenting his/her findings and, if appropriate, instructing that an alternate remedial action or actions be applied. Electronic copies of the report must be sent to the Regional Administrator. Notice of the Assistant Secretary's decision must be published promptly in the Federal Register, and the report of the Assistant Secretary must be made available for public inspection and copying.

(d) If the Assistant Secretary decides that decertification is appropriate, he/she must submit the case to the Secretary providing written explanation for his/her recommendation of decertification.

(e)) Within 30 working days after receiving the Assistant Secretary's report, the Secretary must determine whether to decertify the SWA. The Secretary must grant the request for decertification unless he/she makes one of the three findings set forth in paragraph (b) of this section. If the Secretary decides not to decertify, he/she must then instruct that remedial action be continued or that alternate actions be applied. The Secretary must write a report explaining his/her reasons for not decertifying the SWA and copies (hard copy and electronic) will be sent to the State agency. Notice of the Secretary's decision must be published promptly in the Federal Register, and the report of the Secretary must be made available for public inspection and copy.

(f)) Where either the Assistant Secretary or the Secretary denies a request for decertification and order further remedial action, the Regional Administrator must continue to monitor the SWA's compliance. If the SWA achieves compliance within the time period

established pursuant to paragraph (b) of this section, the Regional Administrator must terminate the remedial actions. If the SWA fails to achieve full compliance within that time period after the Secretary's decision not to decertify, the Regional Administrator must submit a report of his/her findings to the Assistant Secretary who must reconsider the request for decertification pursuant to the requirements of paragraph (b) of this section.

§ 658.706 Notice of decertification.

If the Secretary decides to decertify a SWA, he/she must send a Notice of Decertification to the State agency stating the reasons for this action and providing a 10 working day period during which the SWA may request an administrative hearing in writing to the Secretary. The notice must be published promptly in the Federal Register.

§ 658.707 Requests for hearings.

(a) Any SWA which received a Notice of Decertification under § 658.706 or a notice of disallowance under § 658.702(g) may request a hearing on the issue by filing a written request for hearing with the Secretary within 10 working days of receipt of the notice. This request must state the reasons the SWA believes the basis of the decision to be wrong, and it must be signed

by the State Administrator (electronic signatures may be accepted).

(b) When the Secretary receives a request for a hearing from a State agency, he/she must send copies of a file containing all materials and correspondence relevant to the case to the Assistant Secretary, the Regional Administrator, the Solicitor of Labor, and the DOL Chief Administrative Law Judge. When the case involves violations of regulations governing services to MSFWs or the Complaint System, a copy must be sent to the NMA.

(c) The Secretary must publish notice of hearing in the Federal Register. This notice must

invite all interested parties to attend and to present evidence at the hearing. All interested parties who make written request to participate must thereafter receive copies (hard copy and/or electronic) of all documents filed in said proceedings.

§ 658.708 Hearings.

(a) Upon receipt of a hearing file by the Chief Administrative Law Judge, the case must be docketed and notice sent by electronic mail and registered mail, return receipt requested, to the Solicitor of Labor, Attention: Associate Solicitor for Employment and Training, the Administrator, the Regional Administrator and the State Administrator. The notice must set a time, place, and date for a hearing on the matter and must advise the parties that:

(1) They may be represented at the hearing;

(2) They may present oral and documentary evidence at the hearing;

(3) They may cross-examine opposing witnesses at the hearing; and

(4) They may request rescheduling of the hearing if the time, place, or date set are inconvenient.

(b) The Solicitor of Labor or the Solicitor's designee will represent the Department at the hearing.

§ 658.709 Conduct of hearings.

(a)) Hearings must be conducted in accordance with secs. 5-8 of the Administrative Procedure Act, 5 U.S.C. 553 et seq.

(b) Technical rules of evidence do not apply, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-

examination, must be applied if necessary by the ALJ conducting the hearing. The ALJ may exclude irrelevant, immaterial or unduly repetitious evidence. All documents and other evidence offered or taken for the record must be open to examination by the parties. Opportunity must be given to refute facts and arguments advanced on either side of the issue. A transcript must be made of the oral evidence except to the extent the substance thereof is stipulated for the record.

(c) The general provisions governing discovery as provided in the Rules of Civil Procedure for the United States District Court, title V, 28 U.S.C., rules 26 through 37, may be made applicable to the extent that the Administrative Law Judge concludes that their use would promote the proper advancement of the hearing.

(d) When a public officer is a respondent in a hearing in an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the proceeding does not abate and the officer's successor is automatically substituted as a party. Proceedings following the substitution must be in the name of the substituted party, but any misnomer not affecting the substantive rights of the parties must be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order may not affect the substitution.

§ 658.710 Decision of the Administrative Law Judge.

(a) The ALJ has jurisdiction to decide all issues of fact and related issues of law and to grant or deny appropriate motions, but does not have jurisdiction to decide upon the validity of Federal statutes or regulations.

(b) The decision of the ALJ must be based on the hearing record, must be in writing, and must state the factual and legal basis of the decision. Notice of the decision must be published in the Federal Register and the ALJ's decision must be available for public inspection and copying.

(c) Except when the case involves the decertification of a SWA, the decision of the ALJ will be considered the final decision of the Secretary.

(d) If the case involves the decertification of an appeal to the State agency, the decision of the ALJ must contain a notice stating that, within 30 calendar days of the decision, the State agency or the Administrator may appeal to the Administrative Review Board, United States Department of Labor, by sending by registered mail, return receipt requested, a written appeal to the Administrative Review Board, in care of the Administrative Law Judge who made the decision.

§ 658.711 Decision of the Administrative Review Board.

(a) Upon the receipt of an appeal to the Administrative Review Board, United States Department of Labor, the ALJ must certify the record in the case to the Administrative Review Board, which must make a decision to decertify or not on the basis of the hearing record.

(b) The decision of the Administrative Review Board must be final, must be in writing, and must set forth the factual and legal basis for the decision. Notice of the Administrative Review Board's decision must be published in the Federal Register, and copies must be made available for public inspection and copying.

Thomas E. Perez

Secretary of Labor

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