DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 645

RIN 1205–AB15

Welfare-to-Work (WtW) Grants

AGENCY: Employment and Training Administration (ETA), DOL.

ACTION: Interim final rule; request for comments.

SUMMARY: The Employment and Training Administration hereby issues an Interim Final Rule implementing the Welfare-to-Work (WtW) grant provisions of Title IV, Part A of the Social Security Act as amended by the recent enactment of the Balanced Budget Act of 1997. The Interim Final Rule provides an administrative framework for the WtW program which is being coordinated with the closely-related Temporary Assistance for Needy Families (TANF) program administered by the Department of Health and Human Services (DHHS). While the use of WtW funds should occur within the larger framework of the TANF program in each State, these funds have a purpose that is distinct from that of the TANF program. The purpose of WtW is to provide transitional assistance which moves hard-to-employ welfare recipients living in high poverty areas into unsubsidized employment and economic self-sufficiency.

DATES: *Effective Dates:* This Interim Final Rule shall become effective on November 18, 1997. However, affected parties do not have to comply with the information collection requirements in § 645.240 (reporting requirements for WtW programs) until DOL publishes in the **Federal Register** the control numbers assigned by the Office of Management and Budget (OMB). Publication of the control numbers notifies the public that OMB has approved this information collection requirement under the Paperwork Reduction Act of 1995.

Comment Period: Comments must be submitted by January 20, 1998. The Department will not consider comments received after this date. Comments that are less than 10 pages in length may be transmitted via facsimile at (202) 219–0376, provided that submission of written text follows.

ADDRESSES: Submit written comments to the Employment and Training Administration, Welfare-to-Work Office, 200 Constitution Avenue, NW, Room S5513, Washington, D.C. 20210, *Attention:* Peter E. Rell.

All comments shall be available for public inspection and copying during normal business hours at the Employment and Training Administration, Office of Employment and Training Programs, 200 Constitution Avenue, NW, Room N4459, Washington, D.C. 20210. Copies of the Interim Final Rule are available in the alternate formats of large print and electronic file on computer disk which may be obtained at the above-stated address. The Interim Final Rule is also available on the WtW web site at http://wtw.doleta.gov. Comments may be submitted electronically to that web address.

In compliance with 28 U.S.C. 2112(a), the Employment and Training Administration designates the Associate Solicitor for Employment and Training Services, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N2101, Washington, D.C. 20210, as the recipient of petitions to review this Interim Final Rule.

FOR FURTHER INFORMATION CONTACT: Mr. Peter E. Rell, Welfare-to-Work Office, U.S. Department of Labor, 200 Constitution Avenue, NW, Room S5513, Washington, D.C. 20210, Telephone: (202) 219–0181 (voice) (This is not a toll-free number.) or 1–800–326–2577 (TDD).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act of 1995, information collection requirements which would be imposed as a result of the Interim Rule are being submitted separately to the Office of Management and Budget.

I. Background

On August 22, 1996, President Clinton signed the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), a comprehensive welfare reform bill, under which the TANF program was established to supersede the Aid to Families with Dependent Children (AFDC) welfare program, the Job Opportunities and Basic Skills (JOBS) Training program and the Emergency Assistance (EA) Program. The TANF program at section 401(a) of the Social Security Act (Act) established the following objectives:

- Provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
- End the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;
- Prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and
- Encourage the formation and maintenance of two-parent families.

The TANF provisions substantially changed the nation's welfare system from one in which cash assistance was provided on an entitlement basis to a system in which the primary focus is on moving welfare recipients to work and promoting family responsibility, accountability and self-sufficiency. In general, adult welfare recipients are expected to become self-sufficient within a 60-month period of time. In support of this ''work-first'' objective, the TANF provisions established an overall work participation rate for all households and a work participation rate for two-parent families that must be met by each State starting in fiscal year (FY) 97 and in each fiscal year thereafter through FY 2002. States that do not meet the TANF-established work participation rates face significant financial penalties.

The reference to ''work-first'' refers to the TANF concept that the primary focus is on placing individuals in employment activities. Nevertheless, the work-first approach also recognizes that individuals may be provided, as appropriate, education and skills training related to the job, as well as other services to ensure lasting employment and the achievement of self-sufficiency. Since the enactment of PRWORA, the Administration and Congress have been concerned that those welfare recipients who have the least skills, education, employment experience and who live within high poverty areas may need additional assistance to obtain lasting jobs and become self-sufficient.

On August 5, 1997, the President signed the Balanced Budget Act of 1997. This legislation amended certain TANF provisions of the Social Security Act and authorized the Secretary of Labor to provide WtW grants to States and local communities for transitional employment assistance to move the hard-to-employ TANF welfare recipients into unsubsidized jobs and economic self-sufficiency. Approximately 75 percent of the funds in each fiscal year will be distributed as formula grants to the States, with 85 percent to be passed through to local service delivery areas (SDAs) (generally, one or more units of local government with a population of 200,000 or more) in the States to be administered by the

Private Industry Council (PIC) for the SDA, or an alternate administering entity approved by the Secretary of Labor according to the statutory requirements. The funds distributed through the WtW grant program will assist States and PICs to meet their welfare reform objectives by providing additional resources targeted to hard-to-employ welfare recipients residing in high poverty areas within the State.

WtW activities should be coordinated with those undertaken through TANF, as hard-to-employ welfare recipients constitute a significant portion of the TANF eligible population. Therefore, the ability of State/County TANF agencies, the PICs under the Job Training Partnership Act (JTPA), local governments and a variety of other entities (e.g., One-Stop systems, private sector employers, labor organizations, business and trade associations, education agencies, housing agencies, community development corporations, transportation agencies, community-based and faith-based organizations, disability community organizations, community action agencies, and colleges and universities which provide some of the assistance needed by the targeted population) to implement WtW programs that move these individuals into employment and self-sufficiency will be a major factor in the success of the national initiative to reform the welfare system.

The Interim Final Rule provides a framework for the administration of WtW programs, in coordination with the closely-related TANF program. The Employment and Training Administration (ETA) has coordinated its WtW regulatory efforts with the rulemaking being initiated by the Department of Health and Human Services (DHHS) for the TANF program. The Interim Final Rule supplements TANF's emphasis on moving welfare recipients into work, and on improving program evaluation and performance.

Section 403(a)(5)(A)(ii)(I) of the Act indicates that the States' WtW formula plans are an ''addendum'' to the State TANF plans. In keeping with the Congressional intent to allow States maximum flexibility in implementing TANF requirements, the WtW regulations provide States and local governments with broad discretion to design and implement WtW programs that meet the needs of the hard-to-employ population in the individual States. This approach is consistent with PRWORA's statutory intent to provide States with maximum discretion. The PRWORA Conference Report, H.R. Conf. Rep. No. 725 104th Cong. 2nd Sess. (1996), states that the legislation establishes ''broad cash welfare and child care block grants providing maximum flexibility so that States can reform welfare in ways that are appropriate for them, and can move families into jobs.''

The WtW statute contains several provisions designed to encourage creative and effective use of grant funds. In particular, section 403(a)(5)(B) provides that approximately 25 percent of WtW funds shall be distributed through a competitive grant process which are designed, in part, to expand the base of knowledge about programs to successfully move hard-to-employ recipients to unsubsidized employment and self-sufficiency. In addition, section 403(a)(5)(E) sets aside $100 million as a successful performance bonus, to be distributed in FY 2000 among States who most effectively place hard-to-employ individuals in lasting employment at increased earnings.

The format, as well as the substance, of the Interim Final Rule reflects the Administration's commitment to regulatory reform. The current Federal Register *Document Drafting Handbook* encourages Federal agencies to produce regulations that are reader-friendly. The Department has made every effort to make these regulations clear and easy to understand, as well as to anticipate issues that may arise and to provide appropriate direction. To this end, the Part 645 regulatory text is presented in a ''question and answer'' format.

Section 403(a)(5)(C)(viii) of the Act requires the Secretary of Labor to prescribe regulations implementing the WtW program within 90 days of enactment, after consultation with the Secretaries of DHHS and Housing and Urban Development (HUD). Pursuant to Secretary of Labor's Order No. 4–75, the Assistant Secretary for Employment and Training has been delegated the responsibility to carry out WtW policies, programs, and activities for the Secretary of Labor.

Given the short time frame imposed on the Department, the Employment and Training Administration (ETA) has moved quickly to initiate coordination with the other Federal agencies that have related concerns. In particular, the Department established a Federal Policy Committee composed of officials from the Departments of HHS, HUD, Transportation and Labor. The Policy Committee reviewed and provided policy recommendations to the Department on issues that arose during the development of the Interim Final Rule.

In addition, ETA requested and received input from a broad range of interested parties regarding guidance to be provided by the Agency on how to comply with a number of WtW statutory provisions, e.g., allowable matching funds, expenditure time limits, reallocation policy, Governors' authority to select the State administrative agency, conditions under which the Governor may select an alternate administrative agency (other than the Private Industry Council) at the local level, eligible grant applicants for competitive WtW grants, allowable activities, post-employment and job retention services, job creation through public or private sector employment wage subsidies, community services and work experience programs, limits on administration costs, and performance standards and bonuses.

The Agency has determined that this Interim Final Rule, as promulgated, complies with the WtW statutory mandate and will provide effective direction for the implementation of WtW programs. ETA will review all comments received in response to the Interim Final Rule, as well as program experience, in considering what further action is necessary and promulgating a Final Rule.

II. Summary and Explanation

This section describes and explains the individual provisions of the Interim Final Rule. The explanatory text, in general, adheres closely to the corresponding WtW statutory language. The supporting rationale is provided for those instances where the rule provides direction not prescribed by the WtW statute.

ETA has set regulations only where they are necessary to clarify or to explain how the Agency intends to interpret the WtW statute. Consistent with the Act, the Interim Final Rule provides the States and local governments with the primary responsibility to initiate and develop program implementation procedures and policy guidance regarding WtW administration. For example, while 20 CFR 645.230 indicates that the OMB Circular A–102 ''Common Rule'' requirements apply to WtW programs, the Department has not defined what constitutes WtW ''allowable activities'' which are used under section 403(a)(5)(C) of the Act.

Pursuant to Section 411(a)(1) of the Social Security Act, DHHS has the responsibility to issue WtW participant and program data reporting requirements, after consultation with other appropriate parties. Accordingly, this Interim Final Rule does not address such reporting requirements in detail. Consistent with the purpose of WtW, which is to move welfare recipients into

unsubsidized employment and economic self-sufficiency, the statute anticipates reporting on these measures: placements in unsubsidized employment; placements in unsubsidized employment that last at least six months; placements in the private and public sectors; earnings of individuals who obtain employment; and average expenditures per placement.

Subpart A—Scope and Purpose

What Does This Part Cover? (§ 645.100)

This section of the Interim Final Rule indicates that Part 645 provides regulatory provisions applicable to WtW formula grant funds that are to be used to carry out State-level programs and programs conducted by the PICs at the Service Delivery Area (SDA) level. This part of the regulations also provides general guidance on WtW competitive grants, but it should be clear the Department intends to publish specific Solicitations for Grant Applications (SGAs) in the future. The SGAs to be published will be disseminated widely and will contain specific information about purpose, application requirements, funding amounts, and submission instructions for competitive grant awards.

What Are the Purposes of the Welfare-to-Work Program? (§ 645.110)

This section of the Interim Final Rule describes what the Department believes to be the statutory objective of the WtW program, which complements the overall objectives of the TANF program. For example, the WtW statutory provisions indicate that the ultimate objective to be achieved through the various allowable activities is to ''* * * move individuals into and keep individuals in lasting unsubsidized employment * * *''. In this regard, the WtW program complements the TANF objective to ''* * * end the dependence of needy parents by promoting job preparation, work * * *''. The WtW Program focuses on assistance on hard-to-employ welfare recipients living in high poverty areas.

Although the section requires only that WtW grant funds be coordinated with the State TANF expenditures, the Department also intends that WtW grant funds be coordinated with available resources from the Job Training Partnership Act (JTPA), the Employment Service, the Child Care and Development Block Grant, One-Stop systems, private sector employers, labor organizations, business and trade associations, vocational rehabilitation and other education agencies, housing agencies, community development corporations, transportation agencies, community-based and faith-based organizations, disability community organizations, community action agencies, and colleges and universities and other sources that provide assistance to the WtW targeted individuals.

What Definitions Apply to This Part? (§ 645.120)

This section of the Interim Final Rule includes a limited number of definitions of terms, acronyms and phrases important to the implementation of the WtW programs. This section is not intended to be an all-inclusive listing of definitions provided within the WtW legislation and WtW regulations.

This section includes definitions for the terms ''adult'', ''minor'', and ''TANF MOE'' found in the TANF statute. The Department also relied on the definitions provided in the JTPA regulations at 20 CFR Part 626 for the terms ''PIC'' and ''SDA.'' The definition for ''Chief Elected Official'' comes from Section 103(c) of the Job Training Partnership Act, as amended.

States and PICs (and alternate agencies) should keep in mind that additional definitions applicable to the WtW program, but not listed in this section for the sake of brevity, can be found in the definitions section(s) of the pertinent OMB Circulars on Uniform Administrative Requirements and the OMB Cost Principles Circulars. For example, 29 CFR 97.3 contains definitions for terms and acronyms relating to administration of the WtW programs operated by State, local and Indian tribal organizations, unless otherwise specified. Similarly, 29 CFR Part 95 contains other administrative definitions relating to non-profit organizations.

Subpart B—General Program and Administrative Requirements

What Does This Part Cover? (§ 645.200)

This subpart provides general program and administrative requirements for WtW formula grant funds, including Governors' funds for long-term recipients of assistance, and for competitive grant funding.

Of the total amount of WtW funds available for allotment (after reserving an amount for Indian tribes, evaluation, and performance bonuses), 75 percent is allotted to the States on a formula basis. Generally, the States are required to distribute at least 85 percent of this amount, pursuant to a statutory formula, to service delivery areas. The Governor of a State may reserve up to 15 percent of the State's allotment for projects to help long-term recipients of assistance. The roughly 25 percent of the funds that is not allotted to the States by formula is available for the Secretary to award through a competitive grant process. The regulations which appear in this subpart apply to these funds.

What Is Meant by the Terms ''Entity'' and ''Project'' in the Statutory Phrase ''An Entity that Operates a Project'' With Welfare-to-Work Funds? (§ 645.210)

This section defines the terms ''entity'' and ''project'' in the phrase ''an entity that operates a project'' with WtW funds, as used in section 403(a)(5)(C)(ii) of the Act.

For WtW substate formula funds, ''entity'' means the PIC (or the alternate agency designated by the Governor and approved by the Secretary) which administers the WtW formula funds in a service delivery area(s). This entity is referred to in §§ 645.211 through 645.225 as the ''operating entity''. The term ''entity'' does not refer to subrecipients, contractors, vendors, or other parties to which the PIC or alternate agency may choose to distribute WtW formula funds to provide specific services. The term ''project'' means all activities, administrative and programmatic, supported by the total amount of the WtW formula funds allotted to an entity as described above. Therefore, the requirement relating to the expenditure of 70 percent WtW funds on hard-to-employ individuals, as described in § 645.211, applies to all of the funds allotted to the PIC/alternate administering agency. The entity need not impose these expenditure requirements on each individual subrecipient, contractor, vendor or other party to whom it may choose to distribute WtW funds. However, the entity must ensure that, in the aggregate, it complies with the 70 percent expenditure requirement.

For Governors' funds for long-term recipients of assistance, ''entity'' means the agency, group, or organization to which the Governor has distributed such funds, as described in § 645.410 (b) and (c). This entity is referred to in §§ 645.211 through 645.225 as the ''operating entity''. The term ''project'' means all activities, administrative and programmatic, supported by the total amount of any one award of Governor's funds made to an entity as described above. Therefore, should the entity receive more than one award from the Governor, the 70 percent expenditure requirement, as described in § 645.211, applies individually to each award. The entity need not impose the expenditure requirement on each individual

subrecipient, contractor, vendor or other party to whom it may choose to distribute WtW funds. However, the entity must ensure that in the aggregate it complies with the 70 percent expenditure requirement.

For competitive WtW grants, ''entity'' means an eligible applicant, as described in § 645.500, which is awarded a competitive WtW grant by the Secretary. This entity is referred to in §§ 645.211 through 645.225 as the ''operating entity''. The term ''entity'' does not refer to subrecipients, contractors, vendors, or other parties to which the competitive grant recipient may choose to distribute WtW funds. The term ''project'' means all activities, administrative and programmatic, supported by the total amount of any one competitive grant award. Therefore, should the same entity receive more than one competitive grant, the 70 percent expenditure requirement, as described in § 645.211, applies individually to each competitive grant. The entity need not impose the expenditure requirements on each individual subrecipient, contractor, vendor or other party to whom it may choose to distribute WtW funds. However, the entity must ensure that in the aggregate it complies with the 70 percent expenditure requirement.

How Must Welfare-to-Work Funds Be Spent by the Operating Entity? (§ 645.211)

This section restates the statutory provisions, at section 403(a)(5)(C)(ii) and (iii) of the Act, which require that an operating entity, as described in § 645.210 of this part, expend not less than 70 percent of the WtW funds allotted or awarded to it for the benefit of hard-to-employ individuals, as described in § 645.212, and which provide that up to 30 percent of the funds may be spent to assist individuals with characteristics associated with long-term welfare dependence, as described in § 645.213. If less than 30 percent of the funds are spent to assist individuals with long-term welfare dependence characteristics, as described in § 645.213, the remaining funds shall be spent to benefit hard-to-employ individuals, as described in § 645.212. This requirement applies to all WtW funds, i.e., to substate formula funds, Governors' funds for long-term recipients of assistance, and competitive funds. It should be noted that the requirement does not apply to the proportion of WtW participants served; rather, as noted above, it applies to the percentage of WtW funds expended on the participants in each category of eligibility.

Who May be Served as a Hard-to-Employ Individual Under the 70 Percent Provision? (§ 645.212)

The WtW legislation targets those welfare recipients who will have the most difficulty transitioning into employment. Specifically, the Act, at sections 403(a)(5)(C)(ii) and (iv), establishes three different categories of individuals who may be served under the 70 percent provision. An individual is eligible if (s)he meets the criteria of any one of the following three eligibility categories. (1) To be eligible under the first category, individuals: (a) must be recipients of TANF assistance; *and* (b) must have two of the three specified barriers to employment; *and* (c) must be long-term recipients of TANF assistance or will become ineligible for TANF assistance within twelve months. (2) To be eligible under the second category, an individual must be a noncustodial parent of a minor whose custodial parent meets the three criteria of the first eligibility category. (3) To be eligible under the third category, an individual must have the specified barriers to employment *and* no longer be receiving TANF assistance because (s)he has reached either the Federal five-year lifetime limit on receipt of assistance, or a State-imposed lifetime limit. The regulations paraphrase the statutory language.

Eligibility: Category One. To be eligible to be served under category one of the 70 percent provision, an individual must meet each of the following three eligibility criteria:

Criterion a: Recipients of TANF Assistance. The individual must be a current recipient of TANF assistance. The Act, at section 403(a)(5)(C)(ii), uses the term ''recipients of assistance under the program funded under this part.'' In order to facilitate coordination at the local level, the Department has consulted with DHHS regarding interpretations for ''the program funded under this part'' and ''assistance''. Provisions in the statute which use the term ''the program funded under this part'' refer to the State's program of family assistance that is operated in accordance with the TANF statute, regardless of its funding source. Thus, any individual receiving TANF assistance under the State TANF program (whether funded with State or Federal funds) is deemed to meet this criterion of eligibility under the 70 percent provision.

''Assistance'' means every form of support provided to families under TANF (including child care, work subsidies, and allowances to meet living expenses), except: (a) services that have no direct monetary value to an individual family and that do not involve implicit or explicit income support, such as counseling, case management, peer support, and employment services that do not involve subsidies or other forms of income support; and (b) one-time, short-term assistance (i.e., assistance which is paid no more than once in any 12 month period, is paid within a 30 day period, and covers needs that do not extend beyond a 90-day period, such as automobile repair to obtain employment and avoid welfare receipt, and appliance repair to maintain living arrangements). The Secretary notes that she may issue further rules to conform this provision to similar provisions in forthcoming final regulations governing the TANF program.

Criterion b: Barriers to Employment. The Act, at section 403(a)(5)(C)(ii)(I), states that as the second criterion of eligibility under category one of the 70 percent provision, an individual must face at least two of the three following barriers to employment: (1) the individual has not completed secondary school or obtained a certificate of general equivalency, *and* has low skills in reading or mathematics; (2) the individual requires substance abuse treatment for employment; or (3) the individual has a poor work history.

We are defining the phrase ''has low skills in reading or mathematics'', which is used in the first barrier in criterion b, to mean having reading or mathematics skills at or below grade level 8.9. This definition is consistent with the definition which is used in the Job Training Partnership (JTPA) program. We are also defining the phrase ''has a poor work history'' to mean having worked no more than three consecutive months in the last 12 calendar months. In this way individuals who have taken the initiative to try employment but have not been successful for more than a brief period of time, are eligible for assistance. These definitions reinforce the intent of the WtW legislation to focus assistance on hard-to-employ individuals. However, we provide PICs flexibility for each of these definitions for up to 10 percent of participants to recognize individual circumstances, specialized needs, including individuals with disabilities, and local labor market conditions.

TANF agencies are required to perform an initial assessment of the skills, prior work experience and employability of each TANF recipient who is at least 18 years old, or who has not completed high school (or equivalent) and is not attending

secondary school. It is likely that this assessment may identify the above-noted barriers, and we do not want to require further assessment for the purposes of establishing eligibility where it is not needed. Additionally, in relation to the criterion ''requires substance abuse treatment for employment,'' we note that DHHS is suggesting that the optional individual responsibility plan which the TANF agency develops based on the initial assessment may require the individual to undergo appropriate substance abuse treatment. We do not want to impose an additional Federal definition which would cause a local WtW program operator to ''second-guess'' this determination.

Criterion c: Long-Term/Duration-Impacted TANF Recipients. The third eligibility criterion under category one of the 70 percent provision requires that individuals be long-term recipients of TANF assistance or will become ineligible for TANF assistance within 12 months. The regulations paraphrase the statutory requirements, at section 403(a)(5)(C)(ii)(II), which states that an individual: (1) must have received assistance under a State TANF program, and/or its predecessor program, for at least 30 months, whether consecutive or not; or (2) will become ineligible for assistance within 12 months due to Federal or State-imposed durational time limits on receipt of TANF assistance. This includes individuals who have been exempted from the durational limits due to hardship pursuant to section 408(a)(7)(C) of the Act, but would have faced termination within 12 months without the exemption.

Eligibility: Category Two: Noncustodial Parents. The regulations paraphrase the statutory requirement at section 403(a)(5)(C)(ii). A noncustodial parent of a minor child whose custodial parent meets the eligibility criteria of category one, as specified in § 645.212(a) of this part, is eligible under the 70 percent provision. In order to facilitate coordination at the local level, we are not defining the term ''noncustodial'' any further. We are allowing States to develop and employ their own definition of the term, which we understand States generally use to mean a parent who is absent from the child's household. Under TANF, States can extend employment services to noncustodial parents by including them in their definition of ''eligible family''. In these cases, the States are already using their own non-Federal definition of ''noncustodial.'' Further, States are required by statute to report to DHHS on the number of noncustodial parents participating in work activities. We do not want to impose a definition which would be at odds with those already existing in the States. If a State does not have a definition for ''noncustodial'' parent for TANF purposes, it should develop one in order to serve noncustodial parents in WtW projects.

Eligibility: Category Three: Exceeding Durational Time Limits. The regulations interpret the statutory provision at section 403(a)(5)(C)(iv) to apply to individuals who have reached State-imposed time limits on receipt of TANF assistance in addition to individuals who have reached the five-year Federal limit on receipt of Federal assistance. This interpretation is consistent with the purpose of the WtW funds to assist those who have the most difficulty making the transition from welfare to work. Therefore, an individual who has barriers to employment, as specified in § 645.212(a)(2) of this part, and who would otherwise be eligible to receive TANF assistance but is no longer receiving TANF assistance because (s)he has reached either the Federal five-year lifetime limit on receipt of assistance, or a State-imposed lifetime limit, is eligible.

Who May be Served as an Individual With Long-Term Welfare Dependence Characteristics Under the 30 Percent Provision? (§ 645.213)

The Act, at sections 403 (a)(5)(C)(iii) and (iv), establishes three different categories of individuals who may be served as individuals with characteristics associated with long-term welfare dependence under the 30 percent provision. An individual is eligible if (s)he meets any one of the following three eligibility categories: (1) To be eligible under the first category, individuals must be recipients of TANF assistance *and* have characteristics associated with, or predictive of, long-term welfare dependence. (2) To be eligible under the second category, an individual must be a noncustodial parent of a minor whose custodial parent is receiving TANF assistance, and the noncustodial parent must have characteristics associated with, or predictive of, long-term welfare dependence. (3) To be eligible under the third category, an individual must have characteristics associated with, or predictive of, long-term welfare dependence, be otherwise eligible to receive TANF assistance, but no longer be receiving TANF assistance because (s)he has reached either the Federal five-year lifetime limit on receipt of assistance, or a State-imposed lifetime limit.

Eligibility: Category One. To be eligible under category one of the 30 percent provision, an individual must meet both of the following criteria:

Criterion a: Recipients of TANF Assistance. The individual must be a current recipient of TANF assistance. The Act states, at section 403 (a)(5)(C)(iii)(I), that individuals with long-term welfare dependence characteristics under the 30 percent provision must be ''recipients of assistance under the program funded under this part''. The regulations paraphrase the statutory requirement. In order to facilitate coordination at the local level, the Department has consulted with DHHS regarding interpretations for ''the program funded under this part'' and ''assistance''. For a fuller discussion of this approach, refer to the discussion regarding recipients of TANF assistance in the preamble for § 645.212.

Criterion b: Characteristics Associated With Long-Term Welfare Dependence. The Act states, at section 403 (a)(5)(C)(iii)(I), that an individual must have characteristics associated with long-term welfare dependence, such as having dropped out of school, teenage pregnancy, or having a poor work history. We are interpreting ''associated with'' to include characteristics ''predictive of'' long-term welfare dependence. In order to facilitate coordination at the local level, we will not further define the characteristics associated with long-term welfare dependence. It is likely that the TANF assessment may identify the above-noted characteristics, and we do not want to require further assessment for the purposes of establishing eligibility where it is not needed. Moreover, the regulations interpret the statutory phrase ''such as'' to mean that, in addition to the characteristics listed in the statute, States and PICs may designate other characteristics associated with, or predictive of, long-term welfare dependence, including having a disability. In order to provide the State and local areas with flexibility to design the WtW program to support the goals and objectives of their overall program of assistance for welfare recipients, we are not imposing any further restrictions in this area. Starting with the FY99 State WtW formula plans, States will be asked to include examples of characteristics which the State and PICs consider to be predictive of long-term welfare dependency.

Eligibility: Category Two: Noncustodial Parents. The Act states, at section 403(a)(5)(C)(iii)(II), that noncustodial parents of minors who have the characteristics associated with,

or predictive of, long-term welfare dependence, as described under category one, are eligible to participate under the 30 percent provision if the custodial parent is receiving TANF assistance. In order to facilitate coordination at the local level, we are not defining the term ''noncustodial'' any further. For a fuller discussion of this approach, refer to the discussion regarding noncustodial parents in the preamble for § 645.212.

Eligibility: Category Three: Exceeding Durational Time Limits. The regulations interpret the statutory provision at section 403(a)(5)(C)(iv) to apply to individuals who have reached State-imposed time limits on receipt of TANF assistance in addition to individuals who have reached the five-year Federal limit on receipt of Federal assistance. This interpretation is consistent with the purpose of the WtW funds to assist those who have the most difficulty making the transition from welfare to work. Therefore, an individual who has characteristics associated with, or predictive of, long-term welfare dependence, as specified in § 645.213(a)(2) of this part, and who would otherwise be eligible to receive TANF assistance but is no longer receiving TANF assistance because (s)he has reached either the Federal five-year lifetime limit on receipt of assistance, or a State-imposed lifetime limit, is eligible to participate under the 30 percent provision.

How Will Welfare-to-Work Participant Eligibility be Determined? (§ 645.214)

The regulations state that the operating entity is accountable for ensuring that WtW funds are spent on individuals who are eligible for WtW projects. The regulations acknowledge, however, that the operating entity may not be in the best position to determine all aspects of WtW eligibility, particularly those associated with receipt of TANF assistance. Therefore, the regulations require that the operating entity ensure that there are mechanisms in place to establish WtW eligibility based on the criteria in §§ 645.212 and 645.213. We urge that the mechanisms for determining WtW eligibility address how the PIC or other WtW operating entity and the TANF agency will work together to facilitate the exchange of eligibility information. The actual scope of the mechanisms, operating procedures, and roles and responsibilities of the cooperating parties are best left to local determination given the myriad of circumstances that exist in local areas.

Since receipt of TANF assistance will be the single most critical WtW eligibility criterion in the majority of cases, it is critical that the TANF agency be the source of information about whether an individual is receiving TANF assistance, the length of such receipt, and applicable time limits on such receipt. At a minimum, therefore, for TANF recipients, WtW eligibility determination mechanisms must include arrangements with the TANF agency to ensure that such a determination is based on information, current at the time of the WtW eligibility determination, for the factors specified in § 645.214(b)(1) of this part.

In establishing WtW eligibility for the criteria of barriers to employment, pursuant to § 645.212(a)(2), and characteristics associated with long term-welfare dependency, pursuant to § 645.213(a)(2) of this part, the regulations seek to minimize duplication of effort and encourage coordination of TANF and WtW resources. Specifically, the regulations state that for TANF recipients, the operating entity may base a determination of WtW eligibility for these factors on information that was collected up to six months prior to the WtW eligibility determination, by or through the operating entity for JTPA or for other purposes, or by the TANF agency for the TANF assessment or individual responsibility plan (IRP). This mechanism provides an efficient method to minimize duplication of effort and utilize existing, reliable information while ensuring that a WtW eligibility determination will not be made on the basis of outdated information. This six-month window is intended to provide flexibility to the operating entity to customize its mechanisms for determining WtW eligibility to address the unique circumstances of its local area. In some cases, the operating entity may determine that a shorter time period is preferable. In others, the operating entity may determine that for some characteristics, such as the possession of a high school diploma, the individual's status immediately prior to determination of eligibility should be used in the determination. We recognize that the information previously collected by the operating entity or in the TANF assessment and IRP: (1) may be sufficiently comprehensive to allow for making the WtW eligibility determination; or (2) may not necessarily provide sufficient information to determine WtW eligibility in all categories. In either case, we urge close coordination between the TANF agency and the operating entity to develop a coordinated mechanism for eligibility determination.

The operating entity must also have mechanisms in place to determine WtW eligibility for individuals who are not receiving TANF assistance (i.e., noncustodial parents and individuals who have reached the time limit on receipt of TANF). Mechanisms may include approaches such as: (1) using staff from the operating entity to determine WtW eligibility (utilizing information from TANF and other appropriate agencies); (2) entering into agreements with local agencies, such as the TANF agency, and other appropriate entities, such as One-Stop systems and substance abuse treatment providers, which foster coordination and facilitate the exchange of eligibility information among parties at the local level; and/or (3) performing joint WtW eligibility determination with other appropriate agencies, including the TANF agency. The TANF agency should be able to provide information about assistance received by the custodial parent of minors or by exhaustees to permit the PIC to determine whether an individual qualifies as a noncustodial parent or about individuals who are no longer receiving TANF assistance.

In determining whether someone requires substance abuse treatment for employment, the operating entity can benefit from coordinating with the local recipients of funds from the Substance Abuse Prevention and Treatment (SAPT) Block Grant. In some States, SAPT funds substance abuse awareness and identification programs for TANF case workers. In others, substance abuse counselors supported by SAPT funds are co-located in TANF offices. We urge close coordination by the operating entity with efforts of SAPT and other agencies to identify and address substance abuse among the TANF population.

The regulations also state that once an individual begins to receive WtW services, the operating entity is not required to redetermine WtW eligibility. For instance, if someone ceases to receive TANF assistance due to increased earnings, that individual may continue to participate in appropriate WtW services (such as occupational training offered as a post-employment service or job retention services, if such services are not otherwise available).

What Activities Are Allowable Under This Part? (§ 645.220)

The ultimate objective for each welfare recipient is placement into an unsubsidized job which provides the potential for achieving economic self-sufficiency. Activities conducted with

WtW grant funds must be grounded in the ''work first'' philosophy which is a fundamental tenet of the Act. Although a variety of activities are authorized under WtW, these activities should be viewed as employment-based developmental steps for helping individuals secure and retain unsubsidized employment.

Section 403(a)(5)(C)(i) specifies the allowable activities which can be funded under WtW grants. The statute prescribes the following as allowable activities: job readiness, placement, and post-employment services financed through job vouchers or through contracts with public or private providers; community service or work experience programs; job creation through public or private sector employment wage subsidies; on-the-job training; and job retention or support services if such services are not otherwise available. Congress did not define these activities further. Some activities have commonly understood meanings from their use over time or from operational definitions adopted by other employment and training programs, but others may not.

We consulted with a variety of groups to determine what others thought about how these activities should be defined. A major theme they expressed is the need for maximum State and local flexibility to design programs to successfully move the hardest to employ welfare recipients into unsubsidized employment leading to economic self-sufficiency.

Another major theme expressed by those with whom we consulted is the need for flexibility to provide to the WtW eligible population, training in basic educational and occupational skills, English as a second language training, and referral to vocational rehabilitation services. Indeed, one of the eligibility factors is the lack of a high school or secondary school diploma or a certificate of general equivalency, coupled with low skills in math or reading. In order to make it possible for these educationally disadvantaged individuals to begin to achieve economic self-sufficiency, they need access to tools for developing the skills necessary for achieving their employment goal.

The regulations address these concerns. They provide maximum flexibility to provide transitional assistance which moves welfare recipients into unsubsidized employment providing good career potential for achieving economic self-sufficiency. They also encourage effective linkages of welfare agencies, other agencies serving people with disabilities, adult education, and the workforce development system at the State and local operational levels to maximize the use of all available resources and to focus resources on direct assistance to recipients. Additionally, they encourage the use of training interventions only after an individual begins to work to help participants retain their jobs and move toward economic self-sufficiency.

Specifically, in order to facilitate coordination between WtW and TANF activities at the State and local level, the regulations do not define or describe the activities which are common to both WtW allowable activities and TANF work activities. That is, the regulations provide no definitions or description for community service, work experience, job creation through public or private sector employment wage subsidies, on-the-job training, or job readiness activities. Job readiness may, however, include training for WtW participants starting their own businesses. It is expected that operating definitions for these activities will be arrived at through partnership between the State and local administering agencies, taking into consideration applicable statutory and regulatory provisions.

The regulations do provide examples of post-employment services. Whether an individual is working in a subsidized or unsubsidized job, including self-employment or participation in a registered apprenticeship program, that individual may be allowed to receive post-employment services, which may include basic education, English as a second language, occupational skills training, and mentoring. While the legislation does not permit stand-alone training activities independent of a job, allowing them as post-employment activities only while the participant is working in a subsidized or unsubsidized job reflects the basic ''work first'' thrust of the legislation, while recognizing the critical importance of continuous skills acquisition and lifelong learning to economic self-sufficiency. These examples of post-employment services are not intended to imply that only educational, training, or mentoring services are allowable as post-employment services.

The regulations incorporate the statutory requirement that job readiness, placement, and post-employment services be provided through job vouchers or contracts with public or private providers. Additionally, the requirement, at § 645.230(a)(3), that contracts or vouchers for job placement must include a provision to require that at least one-half of the payment occur after an eligible individual has been placed into the workforce for six months, is referenced.

Given the needs of the target group for this assistance, the provision of adequate job retention and support services will be critical. Each participant engaged in a job readiness activity, an employment activity, or in any other subsidized or unsubsidized job, including participation in a registered apprenticeship program, will also be allowed to receive appropriate job retention and support services, if such services are not otherwise available. These could include transportation assistance, substance abuse treatment, child care, emergency or short-term housing assistance, disability-related services, or other supportive services. However, these services can be provided with WtW funds *only* where they are not otherwise available to the participant. For instance, in the area of child care, the operating entity should ensure that WtW funds are not substituted for child care services available from the Child Care and Development Block Grant, TANF funds, and other State and local funds.

The availability of transportation services, to get welfare recipients to work, training, and child care, is a significant factor in obtaining and retaining employment. Historically, DHHS and DOL programs have defined transportation in terms of the individual client, and allowed reimbursement for services used rather than for service availability. However, client reimbursement will not work where services do not exist. WtW funds may be used for both purposes. For instance, WtW funds may be used to reimburse individual participants for transportation costs, to enable an administering agency to purchase additional needed services from transportation providers, or alternatively to support, in combination with other funding sources, the development of new transportation services that may be needed in order to connect individuals to jobs. Such services could include: late night and other off peak hour services, shuttle service, guaranteed ride home, van pooling and ridesharing, and specialized transportation services provided by non-profit agencies. WtW funds cannot be substituted for services available or already provided through other sources. However, this is not meant to preclude funding of an individual's access to existing sources. For example, although a transit service may exist, an individual may need financial assistance to afford such transportation.

Substance abuse treatment is specifically provided as an example of a job retention service because one of the eligibility factors under the hard-to-employ criteria is the need for substance abuse treatment for employment. In arranging for substance abuse treatment, States and localities should coordinate with the Single State Authority (SSA) (and its subcontractors) designated by the Governor to receive and administer the Substance Abuse Prevention and Treatment (SAPT) Block Grant administered by the Substance Abuse and Mental Health Services Administration, DHHS. This grant, totaling $1.23 billion in FY 1998, accounts for approximately 40 percent of all substance abuse treatment provided through State agencies. The SSA and its county or regional subcontractors also coordinate with, or actually provide, substance abuse treatment funded through other sources. It is imperative that use of WtW funds for substance abuse treatment be coordinated with other funding sources to provide only services not otherwise available. It is equally important that the expertise of SAPT block grant recipients be utilized in developing a strategy to provide WtW participants with substance abuse treatment services.

Regarding substance abuse treatment, States and localities need to be aware that section 408(a)(6) of the Act, which bars the use of Federal TANF funds for medical services, also applies to WtW funds. In many, but not all, instances the treatment of alcohol and drug abuse involves not just ''medical services,'' but other kinds of social and support services as well. Allowing States to use Federal WtW funds for substance abuse treatment is programmatically sound since it addresses the need of a particular target group and may help clients make successful transitions to work. Therefore, WtW funds can be used for drug and alcohol abuse treatment services to the extent that such services are not medical and not otherwise available to the participant. States and localities will have to look at the range of services offered and differentiate between those that are medical and those that are not. For instance, an evaluation of a substance abuser, to determine the appropriate level of care, performed by a member of the medical profession is considered a medical service, as is a medically supervised detoxification program. However, services performed by those not in the medical profession, such as counselors, technicians, social workers, and psychologists, and services not provided in a hospital or clinic, including 24 hour care programs, may be considered non-medical. In short, as in TANF, States and localities cannot use Federal WtW funds for services that the State identifies as medical; they may only use Federal WtW funds for services that are non-medical. States may, however, use their own funds or other funds to provide these services as long as they do not commingle State and Federal funds. Medicare and Medicaid funds may provide another source of funding for medical substance abuse treatment.

Individual development accounts (IDAs) are authorized by section 403(a)(5)(C)(v)(I) of the Act. They are described in detail at section 404(h) of the Act, which gives States the option to fund IDAs with TANF, and by extension, WtW funds, for WtW participants. An IDA is an account established by or for an individual to allow the individual to accumulate funds for specific purposes enumerated in the Act, i.e., postsecondary educational expenses, first home purchase, and business capitalization. The Secretary of DHHS is authorized to establish regulations regarding IDAs. Therefore, we are not regulating or providing further guidance in this area. An entity that funds IDAs with WtW grant funds must comply with Section 404(h) of the Act and the applicable DHHS regulations.

Lastly, the regulations state that intake, assessment, eligibility determination, the development of an individualized service strategy, and case management are allowable and may be incorporated in the program design of any of the allowable activities.

How Do Welfare-to-Work Activities Relate to Activities Provided Under TANF and Other Related Programs? (§ 645.225)

The regulations require that activities provided through WtW be coordinated effectively with activities being provided through the TANF grant and other related programs. The WtW grants provide a critical tool to help States and local governments achieve their own welfare reform goals and to meet their responsibilities under the Act to reduce welfare caseloads and move welfare recipients into permanent employment and off welfare. WtW must be an integral part of the States' and local governments' overall program of assistance to move welfare recipients into unsubsidized employment. WtW formula grants are intended to work through the operating entity to supplement and enhance their overall capacity for assisting welfare recipients find work and progress toward self-sufficiency.

Coordination of resources should include not only those available through WtW and TANF grant funds, and the Child Care and Development Block Grant, but also those available through other related activities and programs, such as the JTPA programs, the State employment service, One-Stop systems, private sector employers, labor organizations, business and trade associations, education agencies, housing agencies, community development corporations, transportation agencies, community-based and faith-based organizations, disability community organizations, community action agencies, and colleges and universities which provide some of the assistance needed by the targeted population.

The regulations require that an assessment of skills, prior work experience, employability, and other relevant information be in place for each WtW participant. This is consistent with the TANF requirement, at section 408(b)(1) of the Act, that an assessment be developed for each recipient of TANF assistance who has attained 18 years of age or has not completed high school or obtained a certificate of high school equivalency, and is not attending secondary school. In order to maximize coordination and minimize duplication of effort, we urge the use of the TANF assessment to meet this requirement where feasible in order to avoid duplicative assessments and unnecessary use of WtW resources.

The regulations require that an individualized strategy for transition to unsubsidized employment should be in place for each participant. This requirement is similar to the TANF provision, at section 408(b)(2) of the Act, regarding an individual responsibility plan (IRP). This strategy should take into account the individual's circumstances reflected in the TANF assessment, JTPA individual service strategy or any participant assessment which may have been performed by the operating entity or its agent. The individualized strategy should also include information regarding disabilities since the characteristics associated with long-term welfare dependence can be caused, or contributed to, by a physical, emotional or cognitive disability. The strategy should assure that activities funded through WtW are effectively coordinated with similar activities (e.g., assessment, case management, supportive services, work activities) being funded through TANF and other related programs to address the

individual's needs so that (s)he can obtain and retain unsubsidized employment. In order to maximize coordination and minimize duplication of effort, the regulations also state that, where appropriate, the TANF IRP may be used for this purpose. It is our understanding that most, if not all, States have exercised their option under TANF of implementing an IRP requirement. The statutory guidelines for the content of an IRP, at section 408(b)(2) of the Act, include an employment goal for the individual and a plan for moving the individual into unsubsidized employment as quickly as possible, and for increasing the responsibility and amount of work the individual is to handle over time. The statutory guidelines also include a description of the obligations of the individual and the services to be provided so that the individual will be able obtain and retain employment. In order to avoid duplicative strategies and unnecessary use of staff resources, we urge the use of the TANF IRP as the WtW individualized service strategy where feasible.

What General Fiscal and Administrative Rules Apply to the Use of Federal Funds? (§ 645.230)

This regulation identifies the appropriate DOL regulations which specify the rules applicable to WtW grants in the areas of fiscal and administrative requirements, audit requirements, allowable cost/cost principles, debarment and suspension, drug-free workplace, restrictions on lobbying, and nondiscrimination. In addition, paragraph (a)(3) of this section specifically indicates that the provision at section 403(a)(5)(C)(i) of the Act is a requirement that is imposed in addition to the procurement provisions applicable to an entity awarding a contract or voucher for job placement services. That provision requires that contracts or vouchers for job placement services must include a provision to require that at least one-half of the payment occur after an eligible individual placed into the workforce has been in the workforce for at least 6 months. Consistent with the purpose of the Act, we have interpreted this provision to apply to placement in unsubsidized jobs. We have done this to avoid the unintended consequence of having all subsidized employment last a minimum of six months.

Paragraph (a)(4) of this section adds a provision to address PIC conflict of interest which is not addressed by the uniform requirements. Paragraph (a)(5) of this section specifies the requirement that the addition method will be required for the use of program income and that the cost of generating any program income may be deducted in determining the amount of program income earned. In paragraph (c) of this section, the authority to grant or deny prior approval for those selected items of cost which require such approval has been delegated to the Governor. Paragraph (g) of this section sets forth restrictions on nepotism related to individuals being hired into WtW subsidized employment, work experience, on-the-job training positions and the like.

What Are the Time Limitations on the Expenditure of Welfare-to-Work Grant Funds? (§ 645.233)

The regulation specifies the time limitation rules for expenditure of the two types of Federal WtW grant funds:

(a) Formula funds—The general rule is that these funds will be available for expenditure for a ''maximum'' period of three years which commences with the effective date of the grant to a State. The grant period will be specified in the Department's formula grant document for each fiscal year of funds provided to the State.

(b) Competitive funds—The general rule is that these funds have the potential for being granted for the ''maximum'' three-year period from the effective date of the grant award but are subject to the terms and conditions of the specific grant.

For both types of grant funds, any remaining funds unexpended at the end of the approved grant period must be returned to the Department in accordance with the applicable closeout rules and procedures. For purposes of determining the time limitations for expenditure of ''performance bonus'' grants, the provisions applicable to formula funds (excluding match) will apply.

What Types of Activities Are Subject to the Administrative Cost Limit on Welfare-to-Work Grants? (§ 645.235)

Paragraph (a) of the regulation restates the fact that the statute imposes a 15 percent limitation on administrative costs for formula grants to States. For competitive grants, the regulation permits a different limitation, up to a maximum of 15 percent, to be specified in the grant agreement. If no limitation is specified, then the 15 percent limitation on administrative costs will also apply to competitive grants.

Paragraphs (b) & (c) spell out the definition of administrative costs for these WtW grants and provide some additional cost classification guidance. Because the local JTPA system is the presumed delivery system for these grants, the regulation uses the JTPA definition of ''administrative costs'' except that paragraph (c)(3) of the regulation incorporates an exception specified at Section 404(b)(2) of the Act. The exception specifically excludes from the administrative cost category the costs of computer hardware and software that is used for tracking and monitoring under a WtW grant. It is only the cost of the assets, however, and not the salaries or wages of staff who use the computers, that is excluded. The regulation also requires that all information technology purchased for WtW grants must be ''year 2000 compliant.'' To meet this requirement, information technology must be able to accurately process date/time data (including, but not limited to, calculating, comparing and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000. The information technology must also be able to make leap year calculations.

These Interim Final WtW regulations adopt the JTPA definition of the term ''Administrative Costs'' to minimize the burden on PICs. The Secretary notes that she may issue further rules to conform this provision to similar provisions in forthcoming final regulations governing the TANF program. Comments on this subject are invited and would be helpful in assessing the advantages and disadvantages of such a change.

What Are the Reporting Requirements for Welfare-to-Work Grants? (§ 645.240)

This regulation indicates that DOL will issue instructions and formats for financial reporting, that DHHS will issue the instructions for participant reporting, and that DOL will issue supplemental participant reporting requirements for competitive grants.

With respect to participant reporting, DOL will, as an interim measure, revise the Standard Program Information Report (SPIR) to incorporate identification of WtW enrollees and WtW activity categories to facilitate the use of a SPIR-based management information system by PICs who choose to use it to manage their WtW funded activities. However, DOL will not require the use or submission of SPIR for WtW.

Who is Responsible for Oversight and Monitoring of Welfare-to-Work Grants? (§ 645.245)

The Secretary of Labor is authorized to provide WtW grants to States and local entities through formula allocations and a competitive process,

respectively. To ensure that Federal funds are accounted for and used in a permissible manner, the Secretary is responsible for oversight of grant activities and expenditure of grant funds, and may monitor any WtW grant recipient or subrecipient. The regulations provide for Federal and State oversight responsibilities.

For formula grants, the Department's monitoring of the States will include a sample of subrecipients. States funded under this program shall develop a statewide monitoring plan and shall make the monitoring plan available for Federal review. In the event that the Secretary determines that a State grant recipient is not in compliance with Federal statutory or regulatory requirements, the Department may provide technical assistance as part of the corrective action process.

The Governor is responsible for oversight of formula grants at the substate level. The State monitoring plan shall provide for adequate oversight and should include State policies and procedures for the implementation, operation and management of the program, as well as State monitoring of reporting requirements for WtW substate grants. The State shall ensure compliance with statutory and regulatory requirements of WtW at the substate level. The State monitoring plan should include an annual monitoring schedule and should describe its process for providing technical assistance to substate grantees that are not in compliance with State or Federal requirements.

What Procedures Apply to the Resolution of Findings Arising From Audits, Investigations, Monitoring and Oversight Reviews? (§ 645.250)

The regulation assigns to the Governor the responsibility to resolve subrecipient findings that arise from audits, investigations, monitoring reviews, and the like. If the States have procedures in place that are used for audit resolution, debt collection and appeal for other grant programs, then the existing processes may be used. Otherwise the State must develop and implement such procedures.

The regulation reserves to the Secretary the authority for resolution of findings that arise from Federal audits, investigations, incident reports, and monitoring reviews, as well as recipient level OMB Circular A–133 audits. The process that will be used is the grant officer initial and final determination process used for other grant programs which is codified at 29 CFR 96.503. Appeals of grant officer final determinations are to be made to the Department's Office of Administrative Law Judges in accordance with the procedures found at 29 CFR 96.603(b).

So as to avoid confusion about which procedures apply to nondiscrimination findings, paragraph (c) specifies that findings arising from investigations or reviews conducted under nondiscrimination laws are to be resolved in accordance with those nondiscrimination laws and the applicable implementing regulations.

What Nondiscrimination Protections Apply to Participants in Welfare-to-Work Programs? (§ 645.255)

Section 645.255 of the regulations provides that participants in WtW programs have such rights as are available under any applicable Federal, State or local law prohibiting discrimination, including, but not limited to: the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*); Section 504 of the Rehabilitation Act of 1975 (Section 504)(29 U.S.C. 794); the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. 12101 *et seq.*) and Title VI of the Civil Rights Act of 1964 (Title VI)(42 U.S.C. 2000d *et seq.*). ETA is not responsible for administering any civil rights laws. Rather, it is the Civil Rights Center (CRC), formerly the Directorate of Civil Rights, within the Office of the Assistant Secretary for Administration and Management, that has the responsibility to enforce such laws as the Age Discrimination Act of 1975, Section 504 and Title VI, with respect to recipients of federal financial assistance from the Department. Additionally, the CRC is responsible for processing complaints alleging violations of the ADA by all State and local government programs, services, and regulatory activities relating to labor and the workforce.

Section 645.255 of the regulations further provides that complaints alleging discrimination, except for those alleging gender discrimination in violation of § 645.255(d), shall be processed in accordance with applicable regulations. For example, WtW recipients who are not also JTPA grant recipients should process complaints that allege discrimination based on race, color or national origin in violation of Title VI of the Civil Rights Act of 1964 in accordance with the Department's Title VI regulation at 29 CFR part 31 by forwarding all such complaints to the CRC (Address at the end of this paragraph.). Similarly, WtW recipients who are not also JTPA grant recipients should process complaints that allege discrimination based upon disability in violation of Section 504 in accordance with 29 CFR 32.45(b), i.e., using the complaint procedures established pursuant to that section. WtW recipients who are also JTPA grant recipients should process complaints of discrimination under procedures established pursuant to 29 CFR 34.42.

29 CFR 34.42 establishes the procedures under which JTPA grant recipients shall process complaints involving violations of the JTPA nondiscrimination and equal opportunity provisions. Since many WtW grant recipients will be PICs and other entities with experience operating programs under JTPA, the Department has determined that, in order to avoid administrative burdens, such entities shall process WtW discrimination complaints under these procedures rather than require that they comply with two different sets of procedures. (Recipients of financial assistance from the Department should be aware that the DOL regulations, at 29 CFR Parts 31, 32, and 34, also require that programs and activities meet certain administrative obligations. Among those is the responsibility to notify participants of their rights under nondiscrimination laws (e.g., Title VI, Section 504 and the Age Discrimination Act), including the right to file a complaint with the CRC. Individuals with questions about the requirements of these nondiscrimination laws, or concerns about compliance by individual WtW programs with these laws, should address their comments or concerns to the Director, Civil Rights Center, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N4123, Washington, D.C. 20210.)

Both Section 408(d) of the PRWORA and its legislative history, as reflected in H.R. Conf. Rep. No. 725, 104 Cong., 2nd Sess. 293 (1996), clarify that recipients are subject to Federal enforcement mechanisms. The Balanced Budget Act of 1997 amended the PRWORA. It provides for, among other things, a new civil rights protection against gender discrimination. This provision ensures that participants who may not be covered under either Title VII of the Civil Rights Act of 1964 or Title IX of the Education Amendments of 1972, are protected against gender discrimination. The PRWORA, as amended, requires States to have grievance procedures to process complaints alleging gender discrimination. The legislative history makes clear that gender-based discrimination is the only civil rights matter that the legislation required to be resolved through a State grievance procedure. See H.R. Conf. Rep. No. 217, 105th Cong., 1st Sess. 935–937 (1997). Other civil rights matters are to be resolved in accordance with the

applicable statutes and regulations listed in the preceding paragraph.

What Health and Safety Provisions Apply to Participants in Welfare-to-Work Programs? (§ 645.260)

The regulation restates the health and safety provisions which are found in section 403(a)(5)(J)(ii) of the Act and specifies that participants alleging a violation of these standards may file a complaint using the State's legislatively mandated grievance system. The Department interprets the statutory phrase ''work activity'' to refer to the allowable employment activities provided for at § 645.220(b) of this part.

What Safeguards Are There to Ensure That Participants in Welfare-to-Work Employment Activities do not Displace Other Employees? (§ 645.265)

Section 403(a)(5)(J) of the Act provides protections to ensure that employees are not displaced by WtW participants engaged in a work activity. The Department interprets the phrase ''work activity'' to refer to the allowable employment activities provided for at § 645.220(b) of this part.

The regulation incorporates the statutory prohibition, in section 403(a)(5)(J)(i) of the Act, against allowing WtW participants to be enrolled in employment activities which violate existing contracts for services or collective bargaining agreements. Where an employment activity would violate a collective bargaining agreement, the regulations provide that the appropriate affected labor organization and employer must provide written concurrence before the employment activity can be undertaken.

The regulations also incorporate the statutory prohibition against allowing an individual participating in employment activities under the WtW program from displacing another employee. Employment activities shall not result in the employment or assignment of a WtW participant or the filling of a position when any other person is on layoff from the same or substantially equivalent job within the same organizational unit. The use of the phrase ''within the same organizational unit'' further clarifies the parameters for the concept of ''a substantially equivalent job''. The employment or assignment of a WtW participant or the filling of a position is prohibited when an employer has terminated any regular, unsubsidized employee or otherwise reduced its workforce with the intent of filling the vacancy with a WtW program participant. In addition, a WtW participant may not be employed or assigned to a position where the employer has caused an involuntary reduction to less than full time in hours of an employee in the same or substantially equivalent job.

Consistent with the goal of this program, which is to place participants in employment which will eventually lead to their economic self-sufficiency, we encourage the States to safeguard the current workforce, while aggressively promoting the creation of employment opportunities for welfare recipients. The State's goal should be the expansion of its workforce through the creation of additional new jobs.

The regulations also specify that grievances regarding displacement may be filed using the State's legislatively mandated grievance system.

What Procedures Are There To Ensure That Currently Employed Workers May File Grievances Regarding Displacement and That Welfare-to-Work Participants in Employment Activities May File Grievances Regarding Displacement, Health and Safety Standards and Gender Discrimination? (§ 645.270)

The regulations reflect the statutory language concerning the requirement that a State must establish a grievance system for regular, unsubsidized employees regarding displacement and for participants in the WtW program regarding displacement, health and safety standards and gender discrimination.

The statute requires that the grievance system must provide an opportunity for a hearing, an appeal, and a final determination within 120 days of the original filing date of the complaint. The regulations give the State the option of including in the grievance system an opportunity for informal resolution prior to the formal hearing. The regulations also provide that in developing its grievance system, the State must specify the time period and format for the hearing and the appeal portions of the procedure. The informal resolution and hearing steps in the grievance procedure may occur at either the State or SDA level. This section of the regulations also restates the statutory provision concerning the designation of a State agency, independent of the State or local agency responsible for administering or supervising the administration of State TANF and WtW programs, to hear appeals.

Subpart C—Additional Formula Grant Administrative Requirements and Procedures

What Constitutes an Allowable Match? (§ 645.300)

A State will be awarded a total of $2 in WtW formula grant funds for each $1 in State matching expenditures up to the maximum amount that the State is entitled to receive under the WtW allotment formula. If the State chooses to propose a lesser amount of match than would be required in order for it to receive the full allotment, it may do so. In such cases, the amount of the Federal WtW grant will be reduced accordingly.

The regulation authorizes the States to use the uniform financial and administrative requirements, codified at 29 CFR 97.24 (the Common Rule), regarding match allowability and documentation, except that no more than one-half of the match may be in the form of in-kind contributions. We will allow 50 percent of the required match to be in-kind contributions in order to encourage the participation of private non-profit and faith-based organizations in efforts to assist individuals transition from welfare to unsubsidized employment and economic self-sufficiency. These organizations can offer significant resources, especially in-kind services, to assist WtW program participants.

Cash donations from non-Federal third parties that are used to pay for allowable costs of the WtW grant program will be considered as cash match, and not counted as in-kind contributions. Matching funds include those State and local dollars in excess of funds spent to meet the TANF MOE requirement when those funds are spent on WtW eligible individuals and activities. Matching requirements may not be met by the use of employers' share of participant wage payments, e.g., the employer's share of OJT. The planning guidance issued for FY98 reiterated the legislative provision requiring that the total matching funds must be expended during the FY in which the WtW grant is awarded. A legislative amendment eliminating this requirement and permitting the expenditure of matching funds over the same three-year period as Federal funds is being considered by Congress. The final rule will reflect the action taken by the Congress with respect to this amendment. If match expenditures do not satisfy the requirement for the full level of Federal funds, the grant amount will be reduced by an appropriate corresponding amount.

Paragraph (c)(7) of the regulation indicates that the burden-of-proof for substantiating match expenditures is to be borne by the recipient of a WtW grant based on its own records and/or those of its subrecipients.

What Assurances Must a State Provide That It Will Make the Required Matching Expenditures? (§ 645.310)

This regulation restates the planning guidance which requires a State to provide a written estimate of planned matching expenditures in its State plan and to describe the process by which the funds will be tracked and reported to ensure that the State meets its projected match.

What Actions Are To Be Taken if a State Fails To Make the Required Matching Expenditures? (§ 645.315)

This regulation requires the Department to implement an annual reconciliation and grant adjustment process for WtW grants. The reconciliation will be based on reported match expenditures made through the end of the FY, as specified in the required report due 45 days after the end of each fiscal year. If the end-of-fiscal-year report has not been received by December 1 of that year, then the reconciliation will be based on the most current report received.

In addition, each FY the Department will evaluate second quarter matching expenditures to determine the status of each State's expenditures compared with planned match. DOL will alert and consult with States that appear to be underexpending matching funds concerning the possibility of reducing the grant to reallot funds if match requirements are not met.

When Will Formula funds be Reallotted and What Reallotment Procedures Will the Secretary Use? (§ 645.320)

This section describes the reconciliation process that the Department will use for determining whether or not a State has expended the required level of matching funds and the process for reallotment of funds that become available as a result of underexpenditure of the required match or failure to fully obligate funds by either States or substate entities. Funds are fully obligated by States when they are awarded to the substate entities.

Subpart D—State Formula Grants Administration

Under What Conditions May the Governor Request an Alternate Administering Agency at the Local Level? (§ 645.400)

The regulations reflect the WtW legislative intent to assign PICs, in cooperation with Chief Elected Officials (CEOs), a presumptive role as the administering agencies for the WtW program at the local level. The Act also provides the Governor authority to select an alternate administrative agency and to request from the Secretary a waiver of the statutory provision that PICs have the sole authority to expend funds for the program at the local level. The Governor may request such a waiver in the State's annual plan and must provide information indicating how the selection of the alternate agency will improve the effectiveness or efficiency of the program in each substate area. In presenting the rationale, pursuant to section 403(a)(5)(A)(vii)(III) of the Act, the Governor shall provide such information as (s)he deems is necessary to establish that the designated alternate agency would improve the effectiveness or efficiency of the administration of the funds in each SDA.

The Department intends for the Governors to have maximum flexibility on what should be included in their presentation(s) of the reason(s) for the selection of an alternate administering agency at the local level. While no specific format is provided, it is suggested the Governor include, as part of the rationale for the selection of an alternate administering agency, information regarding the PIC's performance, administrative capacity, or whether the PIC has turned down the WtW role; and information on the alternate agency's capacity and fiscal integrity. In addition, the Governor is to provide copies of any comments from the CEOs regarding the Governor's selection of the alternate agency.

In addition, the Governor must request a waiver if, during the operation of the local WtW program, s(he) determined that the PIC, or alternate agency, which is administering WtW has not coordinated its expenditures with expenditure of funds provided to the State under TANF. Whenever the Governor requests a waiver, the Governor is to provide a copy of such request to the PIC and CEO of the affected SDA.

The Governor shall bear the burden of proving that the proposed designated alternate agency, rather than the PIC, would improve the effectiveness or efficiency of the administration of WtW funds in the SDA. The Secretary shall assess the information provided by the Governor, as well as any input from the affected CEOs, in reaching a decision on the granting of the waiver requested. The regulations provide the PIC and CEO 15 days in which to respond to the Governor's waiver request and submit written comments to the Department. The Secretary's decision on the Governor's request constitutes final agency action and is not subject to further administrative review.

It is the Department's position, consistent with section 403(a)(5)(A)(vii)(I) of the Act, that in WtW programs the PICs have the same policy guidance and oversight functions as the PICs have under the JTPA. In service delivery areas where, pursuant to the PIC/CEO agreement, the PIC is not the ''administrative entity'' or the ''grant recipient'' (see JTPA sections 4(2) and 103(b)(1)(B)), the PICs will exercise the authority specified in the WtW legislation. In such situations, consistent with section 403(a)(5)(A)(vii)(I) of the Act, the PIC can use the current JTPA administering agency or grant recipient to disburse WtW funds and manage the program. Finally, in situations where the alternate administering agency selected and approved by the Secretary is neither the SDA's administrative entity nor the SDA's grant recipient entity, the Department intends for the alternate agency to take steps to ensure the CEO(s) continues to be consulted on WtW service strategies and activities planned for the SDA.

What Elements Will the State Use in Distributing Funds Within the State? (§ 645.410)

The regulations follow closely the statutory provisions concerning the Governor's responsibility to distribute funds to the SDAs in the State. The Act requires the Governors to establish a formula to distribute funds to the SDAs in the State and specifies the use of up to three formula factors described at section 403(a)(5)(A)(vi)(I) of the Act. The Governor's formula cannot contain any additional formula factors.

In developing the Governor's formula, the statute requires that a weight of no less than 50 percent be given to the following factor: the number by which the population of the area with an income less than the poverty line exceeds 7.5 percent of the total population of the area, compared to all such numbers for all SDAs in the State. This means that at least 50 percent of the funds must be distributed to SDAs based on this factor. If the Governor

chooses not to use this factor in distributing the rest of the funds, these funds may be distributed to an SDA based on one or both of the following factors: an SDA's share of the number of adults receiving assistance under TANF, or the predecessor program, in the SDA for at least 30 months (whether consecutive or not), relative to the number of such adults residing in the State; or an SDA's share of the number of unemployed individuals residing in the SDA, relative to the number of such individuals residing State. If the Governor chooses to use one or both of these additional factors, s(he) may not distribute more that 50 percent of the funds on the basis of these factors. In circumstances where the Governor's formula allocation to an SDA is less than $100,000, those amounts are added to the funds retained at the State level, thereby increasing the amount of funds which may be retained at the State above the 15 percent level. However, in cases where the distribution formula would allocate at least $100,000 to an SDA, those amounts must be allocated to the SDA within 30 days of the date the State receives its Federal allotment.

For guidance in determining the number of individuals with income less than the poverty line, the regulations point the States to section 403(a)(5)(D) of the Act. This section instructs States to use the methodology used by the Bureau of the Census to produce and publish intercensal poverty data for States and counties. The Department is aware that the Bureau of the Census in March of 1997 produced an intercensal report containing State and county data estimates of the number of individuals in poverty and poverty rates for 1993. States should use this data, or comparable more recent data published by the Bureau, to determine the number of individuals below the poverty line who exceed 7.5 percent of the total population of the area. For areas for which 1993 intercensal data is not produced and published by the Bureau of the Census, Governors may use 1990 Census poverty data, in conjunction with the intercensal poverty data for related jurisdictions, where appropriate, as a basis for determining the poverty data for those areas. The Governor is to use the most recent year for which poverty data is available when determining the number of individuals below the poverty line and should use data for the most recent 12-month period when determining the number of adults receiving assistance for at least 30 months.

This section also sets forth the statutory authority of the PICs (or alternate administering agency) to determine, within their respective service delivery areas, the eligible individuals and the allowable activities upon which to expend their within-State fund allocation. The Department expects that a PIC's targeting of eligible individuals and the selection of service strategies will reflect the needs of the target population and the local employment opportunities, and are coordinated with State TANF expenditures.

Up to 15 percent of the funds allotted to the State may be retained by the State for projects to transition long-term recipients into unsubsidized jobs. For a full discussion of what other requirements are applicable to funds retained by the State, please refer to the preamble discussions of §§ 645.210 through 645.225. The regulations clarify that the Governor may utilize PICs, as well other entities, such as One-Stop systems, private sector employers, labor organizations, business and trade associations, education agencies, housing agencies, community development corporations, transportation agencies, community-based and faith-based organizations, disability community organizations, community action agencies, and colleges and universities, to operate projects for long-term recipients to enter unsubsidized jobs. The Department intends for the Governors to develop guidelines on such matters as project application criteria, project design criteria, project outcome goals, project placement expectations, project duration, etc. The Department intends for the Governors to have maximum flexibility in the management and operation of the funds retained by the State, consistent with statutory requirements, to enable the Governors to fund projects that support and complement the Governors' and the PICs' strategies to transition welfare recipients into unsubsidized jobs and economic self-sufficiency.

What Planning Information Must a State Submit in Order to Receive a Formula Grant? (§ 645.415)

The regulation follows section 403(a)(5)(ii) of the Act and specifies that a State must provide an annual plan to the Secretary for each fiscal year it wishes to receive funding. The format of the State plan, as well as the date for submission, will be established by the Secretary and provided to the States. The plan will be an addendum to the TANF plan and will be submitted to the Secretaries of Labor and Health and Human Services.

The Department will review the State plan and will accept it as complete if the plan demonstrates compliance with the WtW legislation. Once the plan is accepted, the Department will provide funding to the State. Where a State includes in its plan a request to use an agency other than the PIC to administer the program locally, the Secretary will carefully assess waiver requests for each local jurisdiction and will grant a waiver if the Secretary determines that the designated alternate agency will more effectively or efficiently administer the WtW grant funds for that area. The Secretary will use the information submitted by the Governor as well as input from the affected PICs and CEOs in the decision-making process. The Secretary's decision whether to grant a waiver shall be considered final agency administrative action.

What Factors Will Be Used in Measuring State Performance? (§ 645.420)

This regulation advises that the Secretary will develop and issue a formula that will be used to measure State performance and to serve as the basis for the award of performance grants in FY 2000. The formula will be developed in consultation with DHHS, the National Governors Association (NGA), and the American Public Welfare Association (APWA), and will be published in mid-1998. As required by section 403(a)(5)(E), the formula will be the basis used to measure the success of States in placing individuals in private sector employment or any kind of employment, the duration of such placements, any increase in earnings of such individuals, and other additional factors that the Secretary of Labor deems to be appropriate.

What Are the Roles and Responsibilities of the State(s) and PIC(s)? (§ 645.425)

This section of the regulations enumerates a number of State and PIC roles and responsibilities embedded in the WtW statute. During the consultation process conducted by the Department to gather input on WtW policy development, there were a number of requests for the Department to explain and clarify the State and PIC roles. The Department believes this section of the regulation is responsive to those requests and highlights the key responsibilities at the State and local level. It does not attempt to create arbitrary divisions since it is our view that coordination among State agencies and programs (e.g., TANF, employment service, One-Stop centers), and local agencies and programs (e.g., PICs, JTPA Title IIA) is essential to meeting the goals of the WtW legislation and that the methods and mechanisms established to

combine resources and mount a coordinated effort to serve WtW participants will necessarily vary according to State/local needs and established relationships. In general, it is our view that, under the Act, the State has the primary responsibility for ensuring that WtW programs are consistent with and well coordinated with services under TANF, and that local entities are in the best position to decide the participants to be targeted and the service mix most appropriate for the participants. Consistent with statutory provisions, the State may not restrict PICs from exercising their authority to expend funds on the statutorily eligible populations. PICs, therefore, have authority to determine the individuals to be served in the service delivery areas.

Subpart E—Welfare-To-Work Competitive Grants

Who Are Eligible Applicants for Competitive Grant Funds? (§ 645.500)

According to the Act, in order to be eligible to apply for competitive grant funds, an organization must be a PIC for an SDA in a State, a political subdivision of a State (e.g., cities, counties), or a private entity applying in conjunction with the PIC or political subdivision. The proposal must be developed in consultation with the Governor. The Department defines the term ''in conjunction with'' to mean that the application submitted by a private entity must include a signed certification by both the applicant and either the applicable PIC or political subdivision that the relevant PIC/political subdivision has been consulted during the development of the application and that the activities proposed in the application are consistent with, and will be coordinated with, the WtW efforts of the PIC/political subdivision.

We believe that this definition of ''in conjunction with'' provides sufficient flexibility for private nonprofit entities, such as community development corporations, community-based and faith-based organizations, disability community organizations, community action agencies, and public and private colleges and universities, to apply for funds, while ensuring that adequate coordination with the ongoing WtW formula program occurs. Our requirement for consultation and certification reiterates the Department's emphasis on collaboration and integration of resources at the local level.

We are also interpreting ''private entity'' to be any qualified organization, public or private, which is neither a PIC nor a political subdivision of a State. The legislative intent, however, is that competitive grants are for projects which are community based and responsive to the circumstances in a local community. Therefore, an application for competitive grant funds will be judged for its connection and responsiveness to a local community.

Although the Department considers local collaboration to be critical to the development of a WtW proposal, in some limited cases, providing evidence of such a collaborative effort may not be possible. In these cases, where a private entity cannot obtain certification from the PIC/political subdivision, the applicant must certify, and provide information indicating, that the PIC/political subdivision has been provided a sufficient opportunity to cooperate in the development of the application and has not acted within a reasonable period of time. The Department believes that 30 days is a sufficient period of time in which a private entity can expect a response from the PIC or political subdivision.

This requirement applies to all PICs or political subdivisions included in the area to be served by the proposed project.

What Is the Required Consultation With the Governor? (§ 645.510)

All applicants for competitive grants, including PICs and political subdivisions, must submit their application to the Governor or the designated State administrative entity for the WtW program for review and comment prior to submission of the application to the Secretary. We have defined sufficient time for review and comment at the State level to be at least 15 days. For applications from private entities, the 15 day comment period must be consecutive to the 30 day period for obtaining evidence of collaboration and support from the PIC or political subdivision.

What Are the Program and Administrative Requirements That Apply to Both the Formula Grants and Competitive Grants? (§ 645.515)

The regulations indicate that all of the general program and administrative requirements that apply to the WtW formula grants also apply to the competitive grants. Competitive grants will be subject to additional reporting and monitoring requirements, however, which will be tailored to the scope of work of the specific grants.

What Are the Application Procedures and Timeframes for Competitive Grant Funds? (§ 645.520)

The Secretary shall establish appropriate application procedures, selection criteria and an approval process to ensure that grant awards accomplish the statutory purposes of the competitive grant funds and that available funds are used in an effective manner. We anticipate that more than one application and award process will occur in each fiscal year of the WtW program. Grant application procedures will be published in the **Federal Register** for each round of competitive grants.

What Special Consideration Will Be Given to Rural Areas and Cities With Large Concentrations of Poverty? (§ 645.525)

Competitive grant awards will be targeted to areas of significant need, especially rural areas and cities with large concentrations of residents living in poverty.

Subpart F—Administrative Appeal Process

What Administrative Remedies Are Available Under This Part? (§ 645.800)

The WtW statute contains provisions (e.g., those addressing the allowable use of funds) which contemplate the exercise of discretion by ETA. It is reasonable to anticipate that there will be instances where parties will seek to overturn decisions made by the Agency.

This section sets the administrative procedures available where a party seeks review of a Grant Officer determination that imposes a sanction or corrective action, pursuant to § 645.250(b) of this part. Paragraph (a) provides that an adverse decision by a Grant Officer may be appealed, within 21 days of the Grant Officer's final determination, to the Department of Labor's Office of Administrative Law Judges. The parties present their cases before an Administrative Law Judge (ALJ) who develops the record for the proceeding, making findings of fact and of law. Such proceedings are relatively informal, utilizing relaxed rules of evidence. For example, a Notice of Appeal functions simply as the invocation of a party's right to administrative review of an Agency decision, rather than as a formal complaint.

Paragraph (b) of this section provides that the ALJ's decision regarding a case arising under this section constitutes final agency action for the purpose of judicial review, unless, within 20 days of the ALJ's decision, a dissatisfied

party petitions the Administrative Review Board (ARB) for review. Review by the ARB is discretionary, so paragraph (b) of this section provides that the ALJ's decision constitutes final Agency action unless the ARB notifies the parties, within 30 days of the filing of the petition for review, that the case has been accepted for review. Further, the ALJ's decision constitutes final Agency action if the ARB has not decided the case arising under this section within 120 days of acceptance for review.

III. Regulatory Flexibility and Executive Order

The Regulatory Flexibility Act of 1980, as amended in 1996 (5 U.S.C. Chapter 6), requires the Federal government to anticipate and minimize the impact of rules and paperwork requirements on small entities. ''Small entities'' are defined as small businesses (those with fewer than 500 employees, except where otherwise provided), small non-profit organizations (those with fewer than 500 employees, except where otherwise provided) and small governmental entities (those in areas with fewer than 50,000 residents). ETA has assessed the potential impact of the draft Interim Final Rule, consulting with a wide range of small entities, in order to identify any areas of concern. Based on that assessment, the Agency certifies that the Interim Final Rule, as promulgated, will not have a significant impact on a substantial number of small entities.

As indicated in the Background Section (Section I, above), the WtW Interim Final Rule implements grant programs that enhance the resources available to States and PICs or the additional WtW financial resources targeted to hard-to-employ welfare recipients and which will assist in efforts to move these individuals into lasting unsubsidized jobs.

ETA has minimized any potential burdens for grant applicants and recipients in order to maximize the resources that will be applied to achieve the purposes of the WtW program. The Agency has further ameliorated any foreseeable burdens by providing (at § 645.235 of the Interim Final Rule) that a grantee can allocate up to 15 percent of a grant award for management and administration of the grant, rather than for the direct provision of services to participants. The Agency has determined that the incremental costs of applying for or administering WtW grants will be minimal, because applicants and grantees will, in general, already be familiar with the grant process due to involvement in existing TANF and JTPA programs. Further, ETA has concluded that any such costs will not place small entities at a disadvantage in relation to larger entities, with regard to obtaining formula grants or competitive grants. Therefore, it is unnecessary to set alternative requirements for small entities.

In addition, pursuant to the Small Business Regulatory Fairness Act (SBREFA) (5 U.S.C. Chapter 8), the Agency has screened the Interim Final Rule and has determined that it is not a ''major rule,'' as defined in 5 U.S.C. 804(2).

IV. Executive Order 12866

Pursuant to Executive Order 12866, the Agency has evaluated the Interim Final Rule and has determined its provisions are consistent with the statement of regulatory philosophy and principles promulgated by the Executive Order. The Department of Labor is required to prescribe regulations for the WtW program within 90 days of the enactment of the Balanced Budget Act of 1997. Within this limited time frame, the Department has made every reasonable effort to obtain input in a purposeful manner from a variety of interested parties (State and local government officials, community-based organizations, and the general public). The WtW grant program increases the resources available to the public and private organizations that promote long-term employment and family self-sufficiency. The Agency has determined the Interim Final Rule will not have an adverse effect in a material way on the nation's economy.

ETA has developed the Interim Final Rule in close consultation with the Departments of HHS, HUD, and Transportation, and with other responsible Federal agencies. Based on that consultation, the Agency has determined the Interim Final Rule will not create a serious inconsistency or otherwise interfere with any action taken or planned by another agency.

The Agency has also assessed the impact of the WtW State match requirement and has determined it will not materially alter the budgetary impact of entitlements and grants. States will receive $2 dollars in WtW grant funds for each $1 in State matching expenditures up to the State WtW fund allotment. Further, ETA has determined that up to 50 percent of the State matching effort can be ''in kind'' (goods and services provided in lieu of cash), allowing the States additional flexibility in qualifying for formula funds.

Overall, as discussed above, the Department has determined that the Interim Final Rule is not unduly burdensome and that the impacts and consequences are non-material for States, local governmental entities and other potentially interested parties.

The Agency finds that this Interim Final Rule raises novel policy issues and thus constitutes a significant regulatory action which has been reviewed by the Office of Management and Budget for the purposes of Executive Order 12866.

V. Unfunded Mandates

The Interim Final Rule has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*) and Executive Order 12875. Section 202 of UMRA requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

If a covered agency must prepare a budgetary impact statement, section 205 of UMRA further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, section 203 of UMRA requires a plan for informing and advising any small government that may be significantly or uniquely impacted.

ETA has determined that the WtW Interim Final Rule will not regulate the expenditure by the State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (Tribal governments are covered by a separate Interim Final Rule for which a separate Unfunded Mandates statement has been prepared). Accordingly, the Agency has not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significant or uniquely impacted small government.

VI. Effective Date and Absence of Notice and Comment

The Employment and Training Administration has determined, pursuant to 5 U.S.C. 553(b)(B), that the statutory mandate to promulgate regulations within 90 days of the enactment of the statute constitutes good cause for waiving notice and comment proceedings. In addition, the Agency has determined, pursuant to 5 U.S.C. 553(d)(3), that the WtW statutory mandate provides good cause for waiving the customary requirement to

delay the effective date of a final rule for 30 days following its publication. The short statutory duration of the WtW program underscores the importance of beginning the disbursement of WtW funds at the earliest possible date. Accordingly, the issuance of a proposed rule, rather than an interim final rule, (or delaying the effective date for 30 days) would be contrary to the public interest. The Interim Final Rule sets a comment period to elicit any concerns raised by the Rule. ETA has limited the comment period to 60 days so that any input is received in time for the Agency to review it in considering any revisions to Part 645 while the WtW program is still in its early steps of operation.

VII. Catalog of Federal Domestic Assistance Number

The program is listed in the *Catalog of Federal Domestic Assistance* at No. 17.253, ''Employment and Training Assistance—Welfare-to-Work Grants to States & Local Entities for Hard-to-Employ Welfare Recipient Programs.''

List of Subjects in 20 CFR Part 645

Employment programs, Grant programs—labor, Welfare-to-Work programs.

Signed at Washington, D.C., this 10th day of November 1997.

Alexis M. Herman,

Secretary of Labor.

Raymond J. Uhalde,

Acting Assistant Secretary, Employment and Training Administration.

For the reasons set forth in the preamble, 20 CFR Ch. V is amended by adding Part 645 to read as follows:

PART 645—PROVISIONS GOVERNING WELFARE-TO-WORK GRANTS

Subpart A—Scope and Purpose

Subpart B—General Program and Administrative Requirements

Subpart C—Additional Formula Grant Administrative Standards and Procedures

Subpart D—State Formula Grants Administration

Subpart E—Welfare-to-Work Competitive Grants

Subpart F—Administrative Appeal Process

Authority: 42 U.S.C. 606(a)(5)(C)(viii).

Subpart A—Scope and Purpose

§ 645.100 What does this subpart cover?

(a) Subpart A establishes regulatory provisions that apply to the Welfare-to-Work (WtW) programs conducted at the State and at the Service Delivery Area (SDA) levels.

(b) Subpart B provides general program requirements applicable to all WtW formula funds. The provisions of this subpart govern how WtW funds must be spent, who is eligible to participate in the program, allowable activities and their relationship to TANF, Governor's projects for long-term recipients, administrative and fiscal provisions, and program oversight requirements. This subpart also addresses worker protections and the establishment of a State grievance system.

(c) Subpart C sets forth additional administrative standards and procedures for WtW Formula Grants, such as matching requirements and reallotment procedures.

(d) Subpart D sets forth the conditions under which the Governor may request a waiver to designate an alternate administering agency, sets forth the formula elements that must be included in the within-State distribution formula, the submission of a State annual plan, the factors for measuring State performance, and the roles and responsibilities of the States and the Private Industry Councils (PICs).

(e) Subpart E outlines general conditions and requirements for the WtW Competitive Grants.

(f) Regulatory provisions applicable to the Indian and Native American Welfare-to-Work Program (INA WtW) are found at 20 CFR part 646.

§ 645.110 What are the purposes of the Welfare-to-Work Program?

The purposes of the WtW program are:

(a) To facilitate the placement of hard-to-employ welfare recipients into transitional employment opportunities which will lead to lasting unsubsidized employment and self-sufficiency;

(b) To provide a variety of activities, grounded in TANF's ''work first'' philosophy, to prepare individuals for, and to place them in, lasting unsubsidized employment;

(c) To provide for a variety of post-employment and job retention services which will assist the hard-to-employ welfare recipient to secure lasting unsubsidized employment;

(d) To provide targeted WtW funds to high poverty areas with large numbers of hard-to-employ welfare recipients.

§ 645.120 What definitions apply to this part?

The following definitions apply under this part:

Act means Title IV, Part A of the Social Security Act, 42 U.S.C. 601–619.

Adult means an individual who is not a minor child.

Chief Elected Official(s) (CEOs) means:

(1) The chief elected official of the sole unit of general local government in the service delivery area,

(2) The individual or individuals selected by the chief elected officials of all units of general local government in such area as their authorized representative, or

(3) In the case of a service delivery area designated under section 101(a)(4)(A)(iii) of JTPA, the representative of the chief elected official for such area (as defined in section 4(4)(C) of JTPA).

Competitive Grants means those WtW funds awarded by the Department under a competitive application process to local governments, PICs, and private entities (such as community development corporations, community-based and faith-based organizations, disability community organizations, and community action agencies) who apply in conjunction with a PIC or local government.

Department or *DOL* means the U.S. Department of Labor.

Employment activities means the activities enumerated at § 645.220(b).

ETA means the Employment and Training Administration of the U.S. Department of Labor.

Fiscal year (FY) means any 12-month period ending on September 30 of a calendar year.

Formula grants means the WtW funds allotted to each Welfare-to-Work State, based on a formula prescribed by the Act, which equally considers States' shares of the national number of poor individuals and of adult recipients of assistance under TANF. The State is required to distribute not less than 85 percent of the allotted formula grant funds to service delivery areas in the State; and the State may retain not more than 15 percent for projects to help long-term recipients of assistance enter unsubsidized employment. Unless otherwise specified, the term ''formula grant'' refers to the 85 percent and 15 percent funds.

Governor means the Chief Executive Officer of a State.

Job Training Partnership Act or *JTPA* means Public Law (Pub. L.) 97–300, as amended, 29 U.S.C. 1501, *et seq.*

Minor child means an individual who has not attained 18 years of age; or has not attained 19 years of age and is a full-time student in a secondary school (or in the equivalent level of vocational or technical training).

MOE means maintenance of effort. Under TANF, States are required to maintain a certain level of spending on welfare based on ''historic'' FY 1994 expenditure levels (Section 409 (a)(7) of the Act).

PIC means a Private Industry Council established under Section 102 of the Job Training Partnership Act, which performs the functions authorized at Section 103 of the JTPA.

PRWORA means the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law (Pub. L.) 104–193, which established the TANF program.

SDA means a service delivery area designated by the Governor pursuant to section 101(a)(4) of the Job Training Partnership Act.

Secretary means the Secretary of Labor.

Separate State program means a program operated outside of TANF in which the expenditures of State funds may count for TANF MOE purposes.

State means the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the US Virgin Islands, Guam, and American Samoa, unless otherwise specified.

State TANF Program means those funds expended under the State Family Assistance Grant (SFAG), the basic block grant allocated to the States under Section 403(a)(1) of the Act.

TANF means Temporary Assistance for Needy Families Program established under PRWORA.

TANF MOE means the expenditure of State funds that must be made in order to meet the Temporary Assistance for Needy Families Maintenance of Effort requirement.

WtW means Welfare-to-Work.

WtW State means those States that the Secretary of Labor determines have met the five conditions established at Section 403(a)(5)(A)(ii) of the Act. Only States that are determined to be WtW States can receive WtW grant funds.

WtW statute means those provisions of the Balanced Budget Act of 1997 containing certain amendments to PRWORA and establishing the new Welfare-to-Work program, amending Title IV of the Social Security Act, (codified at 42 U.S.C. 601–619).

Subpart B—General Program and Administrative Requirements

§ 645.200 What does this subpart cover?

This subpart provides general program and administrative requirements for WtW formula funds, including Governors' funds for long-term recipients of assistance, and for competitive grant funding (section 403(a)(5) of the Act).

§ 645.210 What is meant by the terms ''entity'' and ''project'' in the statutory phrase ''an entity that operates a project'' with Welfare-to-Work funds?

The terms ''entity'' and ''project'', in the statutory phrase ''an entity that operates a project'', means:

(a) For WtW substate formula funds:

(1) ''Entity'' means the PIC (or the alternate agency designated by the Governor and approved by the Secretary pursuant to § 645.400 of this part) which administers the WtW substate formula funds in a service delivery area(s). This entity is referred to in §§ 645.211 through 645.225 of this part as the ''operating entity.''

(2) ''Project'' means all activities, administrative and programmatic, supported by the total amount of the WtW substate formula funds allotted to the entity described in paragraph (a)(1) of this section.

(b) For WtW Governors' funds for long-term recipients of assistance:

(1) ''Entity'' means the agency, group, or organization to which the Governor has distributed any of the funds for long-term recipients of assistance, as described in § 645.410 (b) and (c) of this part. This entity is referred to in §§ 645.211 through 645.225 of this part as the ''operating entity.''

(2) ''Project'' means all activities, administrative and programmatic, supported by the total amount of one discrete award of WtW Governors' funds for long-term recipients of assistance awarded to the entity described in paragraph (b)(1) of this section.

(c) For competitive WtW funds:

(1) ''Entity'' means an eligible applicant, as described in § 645.500 of this part, which is awarded a competitive WtW grant. This entity is referred to in §§ 645.211 through 645.225 of this part as the ''operating entity.''

(2) ''Project'' means all of the activities, administrative and programmatic, supported by the total amount of one discrete WtW competitive grant awarded to the entity described in paragraph (c)(1) of this section (section 403(a)(5)(C) of the Act).

§ 645.211 How must Welfare-to-Work funds be spent by the operating entity?

(a) At least 70 percent of the WtW funds allotted to or awarded to an operating entity, as described in § 645.210 of this part, must be spent to benefit hard-to-employ individuals, as described in § 645.212 of this part.

(b) Not more than 30 percent of the WtW funds allotted to or awarded to an operating entity, as described in § 645.210 of this part, may be spent to assist individuals with long-term welfare dependence characteristics, as described in § 645.213 of this part. If less than 30 percent of the funds is spent to assist individuals with long-term welfare dependence characteristics, the remaining funds shall be spent to benefit hard-to-employ individuals pursuant to paragraph (a) of this section (section 403(a)(5)(C)of the Act).

§ 645.212 Who may be served as a hard-to-employ individual under the 70 percent provision?

(a) An individual is eligible to be served under the 70 percent provision if (s)he meets all three of the criteria listed in paragraphs (a)(1), (2), and (3) of this section:

(1) The individual is receiving TANF assistance; and

(2) Barriers to employment—at least two of the three following barriers to employment must apply to the individual:

(i) Has not completed secondary school or obtained a certificate of general equivalency, and has low skills in reading or mathematics. At least 90 percent of individuals determined to have low skills in reading or mathematics must be proficient at the 8.9 grade level or below.

(ii) Requires substance abuse treatment for employment.

(iii) Has a poor work history. At least 90 percent of individuals determined to have a poor work history must have worked no more than 3 consecutive months in the past 12 calendar months; and

(3) Length of receipt of TANF assistance—the individual must be a long-term recipient, meeting one of the following two criteria:

(i) Has received assistance under a State TANF program, and/or its predecessor program, for at least 30 months. The months do not have to be consecutive; or

(ii) Will become ineligible for assistance within 12 months due to either Federal or State-imposed durational time limits on receipt of TANF assistance. This includes individuals who have been exempted from the durational limits due to hardship pursuant to section 408(a)(7)(C) of the Act, but would face termination within 12 months without the exemption.

(b) A noncustodial parent of a minor is eligible to participate under the 70 percent provision if the custodial parent meets the eligibility requirements of paragraph (a) of this section.

(c) An individual who has barriers to employment, as specified in paragraph (a)(2) of this section, and who would be otherwise eligible to receive TANF assistance but is no longer receiving TANF assistance because (s)he has reached either the Federal five-year lifetime limit on receipt of assistance, or a State-imposed lifetime limit, is eligible to participate under the 70 percent provision (section 403(a)(5)(C) of the Act).

§ 645.213 Who may be served as an individual with long-term welfare dependence characteristics under the 30 percent provision?

(a) An individual is eligible to be served under the 30 percent provision if (s)he meets both criteria listed in paragraphs (a)(1) and (2) of this section:

(1) The individual is receiving TANF assistance; and

(2) The individual has characteristics associated with, or predictive of, long-term welfare dependence, such as having dropped out of school, teenage pregnancy, or having a poor work history. States, in consultation with the operating entity, may designate additional characteristics associated with, or predictive of, long-term welfare dependence.

(b) A noncustodial parent of a minor child is eligible to participate under the 30 percent provision if the noncustodial parent has the characteristics specified in paragraph (a)(2) of this section, and the custodial parent is receiving TANF assistance.

(c) An individual who has characteristics associated with, or predictive of, long-term welfare dependence, as specified in paragraph (a)(2) of this section, and who would be otherwise eligible to receive TANF assistance but is no longer receiving TANF assistance because (s)he has reached either the Federal five-year lifetime limit on receipt of assistance, or a State-imposed lifetime limit, is eligible to participate under the 30 percent provision (section 403(a)(5)(C) of the Act).

§ 645.214 How will Welfare-to-Work participant eligibility be determined?

(a) The operating entity, as described in §§ 645.210(a)(1), (b)(1), and (c)(1) of this part, is accountable for ensuring that WtW funds are spent only on individuals eligible for WtW projects.

(b) The operating entity must ensure that there are mechanisms in place to determine WtW eligibility for individuals who are receiving TANF assistance. These mechanisms:

(1) Must include arrangements with the TANF agency to ensure that a WtW eligibility determination is based on information, current at the time of the WtW eligibility determination, about whether an individual is receiving TANF assistance, pursuant to §§ 645.212(a)(1) and 645.213(a)(1) of this part, the length of receipt of TANF assistance, pursuant to § 645.212(a)(3)(i) of this part, and when an individual may become ineligible for assistance pursuant to § 645.212(a)(3)(ii) of this part (section 403(a)(5)(A)(ii)(dd) of the Act).

(2) May include a determination of WtW eligibility for barriers to employment, pursuant to § 645.212(a)(2) of this part, and for characteristics of long-term welfare dependence, pursuant to § 645.213(a)(2) of this part, based on information collected by the operating entity or the TANF agency up to six months prior to the WtW eligibility determination.

(c) The operating entity must ensure that there are mechanisms in place to determine WtW eligibility for individuals who are not receiving TANF assistance (i.e., noncustodial parents, pursuant to §§ 645.212(b) and 645.213(b) of this part, and individuals who have reached the time limit on receipt of TANF, pursuant to §§ 645.212(c) and 645.213(c) of this part). Mechanisms may include, but are not limited to:

(1) Using staff from the operating entity to determine eligibility;

(2) Entering into agreements with local agencies such as the TANF agency and other appropriate agencies which foster coordination and facilitate the exchange of eligibility information among parties at the local level; and/or

(3) Performing joint eligibility determination with other appropriate agencies, including the TANF agency.

(d) Eligibility for WtW need not be redetermined for an individual after the individual begins to receive WtW services (section 403(a)(5)(C) of the Act).

§ 645.220 What activities are allowable under this part?

Entities operating WtW projects may use WtW funds for the following:

(a) Job readiness activities financed through job vouchers or through contracts with public or private providers.

(b) Employment activities which consist of any of the following:

(1) Community service programs;

(2) Work experience programs;

(3) Job creation through public or private sector employment wage subsidies; and

(4) On-the-job training.

(c) Job placement services financed through job vouchers or through contracts with public or private providers, subject to the payment requirements at § 645.230(a)(3).

(d) Post-employment services financed through job vouchers or through contracts with public or private providers, which are provided after an individual is placed in one of the employment activities listed in paragraph (b) of this section, or in any other subsidized or unsubsidized job. Post-employment services include, but are not limited to, such services as:

(1) Basic educational skills training;

(2) Occupational skills training;

(3) English as a second language training; and

(4) Mentoring.

(e) Job retention services and support services which are provided after an individual is placed in a job readiness activity, as specified in paragraph (a) of this section, in one of the employment activities, as specified in paragraph (b) of this section, or in any other subsidized or unsubsidized job. These services can be provided with WtW funds only if they are not otherwise available to the participant. Job retention and support services include, but are not limited to, such services as:

(1) Transportation assistance;

(2) Substance abuse treatment (except that WtW funds may not be used to provide medical treatment);

(3) Child care assistance;

(4) Emergency or short term housing assistance; and

(5) Other supportive services.

(f) Individual development accounts which are established in accordance with section 404 (h) of the Act.

(g) Intake, assessment, eligibility determination, development of an individualized service strategy, and case management may be incorporated in the design of any of the allowable activities listed in paragraphs (a) through (f) of this section (section 403(a)(5)(C) of the Act).

§ 645.225 How do Welfare-to-Work activities relate to activities provided through TANF and other related programs?

(a) Activities provided through WtW must be coordinated effectively at the State and local levels with activities being provided through TANF (section 403(a)(5)(A)(vii)(II) of the Act).

(b) The operating entity must ensure that there is an assessment of skills, prior work experience, employability, and other relevant information in place for each WtW participant. Where appropriate, the assessment performed by the TANF agency or JTPA should be used for this purpose.

(c) The operating entity must ensure that there is an individualized strategy for transition to unsubsidized employment in place for each participant which takes into account participant assessments, including the TANF assessment and any JTPA assessment. Where appropriate, the TANF individual responsibility plan (IRP) or JTPA individual service strategy should be used for this purpose.

(d) Coordination of resources should include not only those available through WtW and TANF grant funds, and the Child Care and Development Block Grant, but also those available through other related activities and programs such as the JTPA programs, the State employment service, One-Stop systems, private sector employers, labor organizations, business and trade associations, education agencies, housing agencies, community development corporations, transportation agencies, community-based and faith-based organizations, disability community organizations, community action agencies, and colleges and universities which provide some of the assistance needed by the targeted population (section 402(a)(5)(A) of the Act).

§ 645.230 What general fiscal and administrative rules apply to the use of Federal funds?

(a) *Uniform fiscal and administrative requirements.* (1) State, local, and Indian tribal government organizations are required to follow the common rule *''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments''* which is codified in the DOL regulations at 29 CFR part 97.

(2) Institutions of higher education, hospitals, and other non-profit organizations are required to follow OMB Circular A–110 which is codified in the DOL regulations at 29 CFR part 95.

(3) In addition to the requirements at 29 CFR 95.48 and 29 CFR 97.36(i), contracts or vouchers for job placement services supported by funds provided for this program must include a provision to require that at least one-half (½) of the payment occur after an eligible individual placed into the workforce has been in the workforce for six (6) months. This provision applies only to placement in unsubsidized jobs (section 403(a)(5)(C)(i) of the Act).

(4) In addition to the requirements at 29 CFR 95.42 and 29 CFR 97.36(b)(3) which address codes of conduct and conflict of interest issues related to employees, it is also required that:

(i) A PIC member shall 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 PIC nor the receipt of WtW funds to provide training and related services shall be construed, by itself, to violate these conflict of interest provisions.

(5) The addition method shall be required for the use of all program income earned under WtW grants. The cost of generating program income shall be subtracted from the amount earned to establish the amount of program income available for use under the grants.

(b) *Audit requirements.* All governmental and non-profit organizations are required to follow the audit requirements of OMB Circular A–133.[1] This requirement is imposed at 29 CFR 97.26 for governmental organizations and at 29 CFR 95.26 for institutions of higher education, hospitals, and other non-profit organizations.

(c) *Allowable costs/cost principles.* The DOL regulations at 29 CFR 95.27 and 29 CFR 97.22 identify the Federal principles for determining allowable costs which each kind of recipient and subrecipient must follow. For those selected items of cost requiring prior approval, the authority to grant or deny approval is delegated to the Governor.

(1) State, local, and Indian tribal government organizations must determine allowability of costs in

[1] OMB Circulars are available from: Executive Office of the President Publications Service, 725 17th Street NW, Suite G–2200, Washington, DC 20503; 202–395–7332.

accordance with the provisions of OMB Circular A–87, ''Cost Principles for State and Local Governments.''

(2) Non-profit organizations must determine allowability of costs in accordance with OMB Circular A–122, ''Cost Principles for Non-Profit Organizations.''

(3) Institutions of higher education must determine allowability of costs in accordance with OMB Circular A–21, ''Cost Principles for Education Institutions.''

(4) Hospitals must determine allowability of costs in accordance with the provisions of appendix E of 45 CFR part 74, ''Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals.''

(5) Commercial organizations and those non-profit organizations listed in Attachment C to OMB Circular A–122 must determine allowability of costs in accordance with the provisions of the Federal Acquisition Regulation (FAR), at 48 CFR part 31.

(d) *Government-wide debarment and suspension, and government-wide drug-free workplace requirements.* All WtW grant recipients and subrecipients are required to comply with the government-wide requirements for debarment and suspension, and the government-wide requirements for a drug-free workplace which are codified in the DOL regulations at 29 CFR part 98.

(e) *Restrictions on lobbying.* All WtW grant recipients and subrecipients are required to comply with the restrictions on lobbying which are codified in the DOL regulations at 29 CFR part 93.

(f) *Nondiscrimination.* All WtW grant recipients and subrecipients are required to comply with the nondiscrimination provisions which are codified in the DOL regulations at 29 CFR parts 31 and 32. In addition, recipients of WtW grants who are also recipients under JTPA are required to comply with 20 CFR part 34. For purposes of this paragraph, the term ''recipient'' has the same meaning as the term is defined in 29 CFR parts 31, 32, and 34. Participant rights related to nondiscrimination may be found at § 645.255 of this part.

(g) *Nepotism.* (1) No individual may be placed in a WtW employment activity if a member of that person's immediate family is engaged in an administrative capacity for the employing agency.

(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 shall be followed.

§ 645.233 What are the time limitations on the expenditure of Welfare-to-Work grant funds?

(a) *Formula grant funds.* The maximum time limit for the expenditure of a given fiscal year allotment is three years from the effective date of the Federal grant award to the State. The maximum time limit will be allowed and will be specified in the Department's formula grant document for each fiscal year of funds provided to the State. Any remaining funds that have not been expended at the end of the expenditure period must be returned to the Department in accordance with the applicable closeout procedures for formula grants.

(b) *Competitive grant funds.* The maximum time limit for the expenditure of these funds is three years from the effective date of award, but will, in all cases, be determined by the grant period and the terms and conditions specified in the Federal grant award agreement (including any applicable grant modification documents). Any remaining funds that have not been expended at the end of the approved grant period must be returned to the Department in accordance with the applicable closeout procedures for competitive grants (section 503(a)(5)(C)(vii) of the Act).

§ 645.235 What types of activities are subject to the administrative cost limit on Welfare-to-Work grants?

(a) *Administrative cost limitation (section 404(b)(1)).* (1) *Formula grants to States.* Expenditures for administrative purposes under WtW formula grants to States are limited to fifteen percent (15%) of the grant award.

(2) *Competitive grants.* The limitation on expenditures for administrative purposes under WtW competitive grants will be specified in the grant agreement but in no case shall the limitation be more than fifteen percent (15%) of the grant award.

(b) The costs of administration are that allocable portion of necessary and allowable costs associated with the overall management and administration of the WtW program and which are not directly related to the provision of services to participants. These costs can be both personnel and non-personnel and both direct and indirect. Costs of administration shall include:

(1) Except as provided in paragraph (c)(1) of this section, costs of salaries, wages, and related costs of the recipient's, subrecipient's or PIC's staff engaged in:

(i) Overall program management, program coordination, and general administrative functions, including the salaries and related costs of the executive director, WtW director, project director, personnel officer, fiscal officer/bookkeeper, purchasing officer, secretary, payroll/insurance/property clerk and other costs associated with carrying out administrative functions;

(ii) Preparing program plans, budgets, schedules, and amendments thereto;

(iii) Monitoring of programs, projects, subrecipients, and related systems and processes;

(iv) Procurement activities, including the award of specific subgrants, contracts, and purchase orders;

(v) Providing State or local officials and the general public with information about the program (public relations);

(vi) Developing systems and procedures, including management information systems (except as provided in paragraph (c)(3) of this section), for assuring compliance with program requirements;

(vii) Preparing reports and other documents related to the program requirements;

(viii) Coordinating the resolution of audit findings;

(ix) Evaluating program results against stated objectives; and

(x) Performing administrative services, including such services as general legal services, accounting services, audit services; and managing purchasing, property, payroll, and personnel;

(2) Except as provided at paragraph (c)(3) of this section, costs for goods and services required for administration of the program, including such goods and services as rental or purchase of equipment, utilities, office supplies, postage, and rental and maintenance of office space;

(3) The costs of organization-wide management functions; and

(4) Travel costs incurred for official business in carrying out program management or administrative activities.

(5) These Interim Final WtW regulations adopt the description of the term ''Administrative Costs'' found in the JTPA regulations at 29 CFR 627.440 to minimize the burden on PICs. The Secretary reserves the right to change the definition to be consistent with the TANF definition when final TANF regulations are issued.

(c) *Other cost classification guidance.* (1) Personnel and related non-personnel costs of the recipient's or subrecipient's staff, including project directors, who perform both administrative and programmatic services or activities may be allocated to the benefitting cost objectives/categories based on documented distributions of actual time

worked or other equitable cost allocation methods.

(2) Indirect or overhead costs normally shall be charged to administration, except that specific costs charged to an overhead or indirect cost pool that can be identified directly with a cost objective/category other than administration may be charged to the cost objective/category directly benefitted. Documentation of such charges shall be maintained.

(3) The costs of information technology—computer hardware and software—needed for tracking or monitoring under a WtW grant shall not be charged to the administration of the grant (section 404(b)(2) of the Act).

Only the costs of information technology that is ''year 2000 compliant'' shall be allowable under WtW grants. To meet this requirement, information technology must be able to accurately process date/time data (including, but not limited to, calculating, comparing and sequencing) from, into and between the twentieth and twenty-first centuries, and the years 1999 and 2000. The information technology must also be able to make leap year calculations. Furthermore, ''year 2000 compliant'' information technology when used in combination with other information technology shall accurately process date/time data if the other information technology properly exchanges date/time data with it.

§ 645.240 What are the reporting requirements for Welfare-to-Work programs?

(a) *General.* All States and other direct grant recipients shall report pursuant to instructions issued by DOL (financial data) and by DHHS (participant data only). Reports shall be submitted no more frequently than quarterly within a time period specified in the reporting instructions. In addition, DOL will establish supplemental reporting requirements for competitive grant recipients through the grant agreements pursuant to § 645.515 of this part.

(b) *Subrecipient reporting.* A State or other direct grant recipient may impose different forms or formats, shorter due dates, and more frequent reporting requirements on subrecipients. However, the recipient is required to meet the reporting requirements imposed by DOL and DHHS.

(c) *Financial reports.* Financial reports shall be submitted to DOL by each grant recipient. Reported expenditures and program income must be 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 shall develop accrual information through an analysis of the documentation on hand.

(d) *Due date.* Financial reports will be due no later than 45 days after the end of each quarter. A final financial report is required 90 days after the expiration of a funding period or the termination of grant support.

(e) Optional SPIR Reporting. DOL may also provide instructions for an optional modified SPIR for internal program management (section 411(a) of the Act).

§ 645.245 Who is responsible for oversight and monitoring of Welfare-to-Work grants?

(a) The Secretary may monitor all recipients and subrecipients of all grants awarded and funds expended under WtW. Federal oversight will be conducted primarily at the State level for formula grants and at the recipient level for competitive grants.

(b) The Governor shall monitor PICs (or other approved administrative entities) funded under the State's formula allocated grants on a periodic basis for compliance with applicable laws and regulations. The Governor shall develop and make available for review a State monitoring plan.

§ 645.250 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 is responsible for the resolution of findings that arise from the State's monitoring reviews, investigations and audits (including OMB Circular A–133 audits) of subrecipients.

(2) A State shall utilize the audit resolution, debt collection and appeal procedures that it uses for other Federal grant programs.

(3) If a State does not have such procedures, it shall prescribe standards and procedures to be used for this grant program.

(b) *Resolution of State level findings.* (1) The Secretary is responsible for the resolution of findings that arise from federal audits, monitoring reviews, investigations, incident reports, and recipient level OMB Circular A–133 audits.

(2) The Secretary will use the DOL audit resolution process, consistent with the Single Audit Act of 1996 and OMB Circular A–133.

(3) A final determination issued by a grant officer pursuant to this process may be appealed to the DOL Office of Administrative Law Judges under the procedures at § 645.800.

(c) *Resolution of nondiscrimination findings.* Findings arising from investigations or reviews conducted under nondiscrimination laws shall be resolved in accordance with those laws and the applicable implementing regulations.

§ 645.255 What nondiscrimination protections apply to participants in Welfare-to-Work programs?

(a) All participants in WtW programs under this part shall have such rights as are available under all applicable Federal, State and local laws prohibiting discrimination including:

(1) The Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*);

(2) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);

(3) The Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*); and

(4) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*).

(b) Complaints alleging discrimination in violation of any applicable Federal, State or local law, including those listed in paragraph (a) of this section, shall be processed in accordance with those laws and the implementing regulations.

(c) Questions about or complaints alleging a violation of the nondiscrimination laws in paragraph (a) of this section 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.

(d) Participants in job readiness and employment activities operated with WtW funds, as defined in § 645.220 of this part, shall not be discriminated against because of gender. Participants alleging gender discrimination may file a complaint using the State's grievance system procedures as described in § 645.270 of this part (section 403(a)(5)(J)(iii) of the Act).

§ 645.260 What health and safety provisions apply to participants in Welfare-to-Work programs?

(a) Participants in an employment activity operated with WtW funds, as defined in § 645.220 of this part, are subject to the same health and safety standards established under State and Federal law which are applicable to similarly employed employees, of the same employer, who are not participants in programs under WtW.

(b) Participants alleging a violation of these health and safety standards may file a complaint pursuant to the procedures contained in § 645.270 of this part (section 403(a)(5)(J)(ii) of the Act).

§ 645.265 What safeguards are there to ensure that participants in Welfare-to-Work employment activities do not displace other employees?

(a) An adult participating in an employment activity operated with WtW funds, as described in § 645.220 of this part, may fill an established position vacancy subject to the limitations in paragraph (c) of this section.

(b) An employment activity operated with WtW funds, as described in § 645.220 of this part, shall not violate existing contracts for services or collective bargaining agreements. Where such an employment activity would violate a collective bargaining agreement, the appropriate labor organization and employer shall provide written concurrence before the employment activity is undertaken.

(c) An adult participating in an employment activity operated with WtW funds, as described in § 645.220 of this part, shall not be employed or assigned:

(1) When any other individual is on layoff from the same or any substantially equivalent job within the same organizational unit;

(2) If 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 WtW participant; and,

(3) If the employer has caused an involuntary reduction to less than full time in hours of any employee in the same or substantially equivalent job within the same organizational unit.

(d) Regular employees and program participants alleging displacement may file a complaint pursuant to § 645.270 of this part (section 403(a)(5)(J)(i) of the Act).

§ 645.270 What procedures are there to ensure that currently employed workers may file grievances regarding displacement and that Welfare-to-Work participants in employment activities may file grievances regarding displacement, health and safety standards and gender discrimination?

(a) The State shall establish and maintain a grievance procedure for resolving complaints from:

(1) Regular employees that the placement of a participant in an employment activity operated with WtW funds, as described in § 645.220 of this part, violates any of the prohibitions described in § 645.265 of this part; and

(2) Program participants in an employment activity operated with WtW funds, as described in § 645.220 of this part, that any employment activity violates any of the prohibitions described in §§ 645.255(d), 645.260, or 645.265 of this part.

(b) Such grievance procedure should include an opportunity for informal resolution.

(c) If no informal resolution can be reached within the specified time as established by the State as part of its grievance procedure, such procedure shall provide an opportunity for the dissatisfied party to receive a hearing upon request.

(d) The State shall specify the time period and format for the hearing portion of the grievance procedure, as well as the time period by which the complainant will be provided the written decision by the State.

(e) A decision by the State under paragraph (d) of this section may be appealed by any dissatisfied party within 30 days of the receipt of the State's written decision, according to the time period and format for the appeals portion of the grievance procedure as specified by the State.

(f) The State shall designate the State agency which will be responsible for hearing appeals. This agency shall be independent of the State or local agency which is administering, or supervising the administration of the State TANF and WtW programs.

(g) No later than 120 days of receipt of an individual's original grievance, the State agency, as designated in paragraph (f) of this section, shall provide a written final determination of the individual's appeal.

(h) The grievance procedure shall include remedies for violations of §§ 645.255(d), 645.260, and 645.265 of this part which may continue during the grievance process and which may include:

(1) Suspension or termination of payments from funds provided under this part;

(2) Prohibition of placement of a WtW participant with an employer that has violated §§ 645.255(d), 645.260, and 645.265 of this part;

(3) Where applicable, reinstatement of an employee, payment of lost wages and benefits, and reestablishment of other relevant terms, conditions, and privileges of employment; and

(4) Where appropriate, other equitable relief (section 403(a)(5)(J)(iv) of the Act).

Subpart C—Additional Formula Grant Administrative Standards and Procedures

§ 645.300 What constitutes an allowable match?

(a) A State is entitled to receive two (2) dollars of Federal funds for every one (1) dollar of State match expenditures, up to the amount available for allotment to the State based on the State's percentage for WtW formula grant for the fiscal year. The State is not required to provide a level of match necessary to support the total amount available to it based on the State's percentage for WtW formula grant. However, if the proposed match is less than the amount required to support the full level of federal funds, the grant amount will be reduced accordingly (section 403(a)(5)(A)(i)(I) of the Act).

(b) States shall follow the match or cost-sharing requirements of the ''Common Rule'' *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments* (codified for DOL at 29 CFR 97.24). Paragraphs (b)(1)(i) and (ii), (b)(3), (b)(4) and (c)(1) of this section are in addition to the common rule requirements. Also, paragraphs included in the common rule which relate to the use of donated buildings and other real property as match have been excluded from this provision.

(1) Only costs that would be allowable if paid for with WtW grant funds will be accepted as match.

(i) Because the use of Federal funds is prohibited for construction or purchase of facilities or buildings except where there is explicit statutory authority permitting it, costs incurred for the construction or purchase of facilities or buildings shall not be acceptable as match for a WtW grant.

(ii) Because the costs of construction or purchase of facilities or buildings are unallowable as match, the donation of a building or property as a third party in-kind contribution is also unallowable as a match for a WtW grant.

(2) A match or cost-sharing requirement may be satisfied by either or both of the following:

(i) Allowable costs incurred by the grantee, subgrantee or a cost type contractor under the assistance agreement. This includes allowable cost borne by non-Federal grants or by others and cash donations from non-Federal third parties.

(ii) The value of third party in-kind contributions applicable to the FY period to which the cost-sharing or matching requirement apply.

(3) No more than one-half (½) of the total match expenditures may be in the form of third party in-kind contributions.

(4) Match expenditures must be recorded in the books of account of the entity that incurred the cost or received the contribution. These amounts may be

rolled up and reported as aggregate State level match.

(c) *Qualifications and exceptions.* (1) The matching requirements may not be met by the use of an employer's share of participant wage payments (e.g., employer share of OJT wages).

(2) *Costs borne by other Federal grant agreements.* A cost-sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another Federal grant.

(3) *General revenue sharing.* For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.

(4) *Cost or contributions counted towards other Federal cost-sharing requirements.* Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost-sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost-sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.

(5) *Costs financed by program income.* Costs financed by program income, as defined in 29 CFR 97.25, shall not count towards satisfying a cost-sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement. (This use of general program income is described in § 97.25(g)).

(6) *Services or property financed by income earned by contractors.* Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost-sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(7) *Records.* Costs and third party in-kind contributions counting towards satisfying a cost-sharing or matching requirement must be verifiable from the records of grantees and subgrantee or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(8) *Special standards for third party in-kind contributions.* (i) Third party in-kind contributions count towards satisfying a cost-sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(ii) Some third party in-kind contributions are goods and services that, if the grantee, subgrantee, or contractor receiving the contribution had to pay for them, the payments would have been an indirect costs. Cost sharing or matching credit for such contributions shall be given only if the grantee, subgrantee, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(iii) A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost-sharing or matching requirement only if it results in:

(A) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee) or

(B) A cost savings to the grantee or subgrantee.

(iv) The values placed on third party in-kind contributions for cost-sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

(d) *Valuation of donated services.* (1) *Volunteer services.* Unpaid services provided to a grantee or subgrantee by individuals will be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. If the grantee or subgrantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) *Employees of other organizations.* When an employer other than a grantee, subgrantee, or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (d)(1) of this section applies.

(e) *Valuation of third party donated supplies and loaned equipment or space.* (1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

§ 645.310 What assurance must a State provide that it will make the required matching expenditures?

In its State plan, a State must provide a written estimate of planned matching expenditures and describe the process by which the funds will be tracked and reported to ensure that the State meets its projected match (section 403(a)(5)(A)(i)(I) of the Act).

§ 645.315 What actions are to be taken if a State fails to make the required matching expenditures?

(a) The Department will implement an annual reconciliation and grant adjustment for WtW grants.

(1) The reconciliation will be based on reported match expenditures through the end of the FY report, which is due 45 days after the end of the fiscal year.

(2) If the end of FY report has not been received by December 1 of that year, then the reconciliation will be based on the most current report received.

(b) If match expenditures do not satisfy the requirement of the FY grant, the subsequent FY grant amount will be reduced by the appropriate corresponding amount (i.e., the grant will reduced by two (2) dollars for each one (1) dollar shortfall in State matching funds).

§ 645.320 When will formula funds be reallotted, and what reallotment procedures will the Secretary use?

(a) No reallotment of funds among States will occur during FY 98;

(b) For subsequent fiscal years, a reconciliation will be made during the first quarter of the fiscal year under § 645.315 of this part to determine whether or not a State has satisfied its required level of matching funds for the prior year.

(c) If a State has failed to expend the required level of matching funds, the required reduction in the State grant will be made during the second quarter of the fiscal year.

(d) Also, any funds which become available as a result of underexpenditures of required match, or failure to obligate 100 percent of the funds by either States or substate entities by the end of the fiscal year of the grant, will be reallotted among qualifying States (i.e., those which have committed a sufficient match to qualify for additional funds). The reallotment

will occur during the second quarter of the following fiscal year (section 403(a)(5)(A)(i)(I) of the Act).

Subpart D—State Formula Grants Administration

§ 645.400 Under what conditions may the Governor request a waiver to designate an alternate local administering agency?

(a)(1) The Governor may include in the State's WtW Plan a waiver request to select an agency other than the PIC to administer the program for one or more SDAs in a State; or

(2) When the Governor determines the PIC, or alternative agency, has not coordinated its expenditures with the expenditure of funds provided to the State under TANF, pursuant to section 403(a)(5)(A)(vii)(II) of the Act, the Governor shall request a waiver.

(b) The Governor shall bear the burden of proving that the designated alternative agency, rather than the PIC or other administering agency, would improve the effectiveness or efficiency of the administration of WtW funds in the SDA. The Governor's waiver request shall include information to meet that burden. The Governor shall provide a copy of the waiver request and any supporting information submitted to the Secretary to the PIC and CEO of the SDA for which an alternative administering agency is requested.

(c) The PIC and CEO shall have fifteen (15) days in which to submit his or her written response to the Department. The PIC and CEO shall provide a copy of such response to the Governor.

(d) The Secretary will assess the waiver information submitted by the Governor, including input from the PIC and CEO in reaching the decision whether to permit the use of an alternate administrative agency.

(e) The Secretary shall approve a waiver request if she determines that the Governor has established that the designated alternative administering agency, rather than the PIC or other administering agency, will improve the effectiveness or efficiency of the administration of WtW funds provided for the benefit of the SDA.

(f) Where an alternate administering agency is approved by the Secretary, such administrative entity shall coordinate with the CEO for the applicable SDA(s) regarding the expenditure of WtW grant funds in the SDA(s).

(g) The decision of the Secretary to approve or deny a waiver request will be issued promptly and shall constitute final agency action.

§ 645.410 What elements will the State use in distributing funds within the State?

(a) Of the WtW funds allotted to the State, not less than 85 percent of the State allotment must be distributed to the SDAs in the State.

(1) The State shall prescribe a formula for determining the amount of funds to be distributed to each SDA in the State using no factors other than the three factors described in paragraphs (a)(2) and (3) of this section;

(2) The formula prescribed by the Governor must include as one of the formula factors for distributing funds the provision at section 403(a)(5)(A)(vi)(I)(aa) of the Act. The Governor is to distribute funds to an SDA based on the number by which the population of the area with an income that is less than the poverty line exceeds 7.5 percent of the total population of the area, compared to all such numbers in all such areas in the State. The Governor must assign a weight of not less than 50 percent to this factor;

(3) The Governor shall distribute the remaining funds, if any, to the SDAs utilizing only one or both of the following factors:

(i) The SDA's share of the number of adults receiving assistance under TANF or the predecessor program in the SDA for 30 months or more (whether consecutive or not), relative to the number of such adults residing in the State;

(ii) The SDA's share of the number of unemployed individuals residing in the SDA, relative to the number of such individuals residing in the State.

(4) If the amount to be distributed to a service delivery area by the Governor's formula is less than $100,000, the funds shall be available to be used by the Governor to fund projects described at paragraph (b) of this section.

(5) States shall use the guidance provided at section 403(a)(5)(D) of the Act in determining the number of individuals with an income that is less than the poverty line.

(6) PICs (or alternate administering agency) shall determine, pursuant to section 403(a)(5)(A)(vii)(I) of the Act, on which individual(s) and on which allowable activities to expend its WtW fund allocation.

(7) The State shall distribute the SDAs' allocations in a timely manner, but not later than 30 days from receipt of the State's fund allotment.

(b) Of the funds allocated to the State, up to 15 percent of the funds may be retained at the State level to fund projects that appear likely to help long-term recipients of assistance enter unsubsidized employment. Any additional funds available as a result of the process described at paragraph (a)(4)of this section, shall also be available to be used to fund projects to help long-term recipients of assistance enter unsubsidized jobs.

(c) The Governors may distribute the funds retained pursuant to paragraph (b) of this section to a variety of workforce organizations, in addition to PICs, and other entities such as One-Stop systems, private sector employers, labor organizations, business and trade associations, education agencies, housing agencies, community development corporations, transportation agencies, community-based and faith-based organizations, disability community organizations, community action agencies, and colleges and universities which provide some of the assistance needed by the targeted population.

§ 645.415 What planning information must a State submit in order to receive a formula grant?

(a) Each State seeking financial assistance under the formula grant portion of the WtW legislation must submit an annual plan meeting the requirements prescribed by the Secretary. This plan shall be in the form of an addendum to the TANF State plan and shall be submitted to the Secretaries of Labor and Health and Human Services.

(b) The Secretary shall review the State plan for compliance with the statutory and regulatory provisions of the WtW program. The Secretary's decision whether to accept a State plan as in compliance with the Act shall constitute final agency action.

(c) If the Governor has requested a waiver to permit the selection of an alternative administering agency in the State plan, the provisions of § 645.400 of this part shall apply (section 403(a)(5)(A)(ii) of the Act).

§ 645.420 What factors will be used in measuring State performance?

(a) State performance will be measured by a formula issued by the Secretary after consultation with DHHS, the National Governors Association (NGA) and the American Public Welfare Association (APWA).

(b) The formula shall be the basis for measuring the success of States in placing individuals in private sector employment or any kind of employment, the duration of such placements, any increase in earnings of such individuals and other additional factors that the Secretary of Labor deems to be appropriate. The formula will provide for adjustments due to general economic conditions on a State-by-State basis.

(c) The formula shall serve as the basis for the award of FY 2000 bonus grants based on successful performance (section 403(a)(5)(E) of the Act).

§ 645.425 What are the roles and responsibilities of the State(s) and PIC(s)?

(a) *State roles and responsibilities.* A State:

(1) Designates State WtW administering agency;

(2) Provides overall administration of WtW funds, consistent with the WtW statute, WtW regulations and the State's WtW Plan;

(3) Develops the State WtW Plan in consultation and coordination with appropriate entities in substate areas, such as One-Stop systems, private sector employers, labor organizations, business and trade associations, education agencies, housing agencies, community development corporations, transportation agencies, community-based and faith-based organizations, disability community organizations, community action agencies, and colleges and universities which provide some of the assistance needed by the targeted population (section 403(a)(5)(A)(ii)(I)(cc) of the Act);

(4) Distributes funds to SDAs, consistent with the provisions described at § 645.410(a) (section 403(a)(5)(A)(ii)(I)(bb));

(5) Conducts oversight and monitoring of WtW activities and fund expenditures at the State and local levels for compliance with applicable laws and regulations, consistent with the provisions at § 645.245 and provides technical assistance as appropriate;

(6) Ensures coordination of PIC fund expenditures with the State TANF expenditures and other programs (section 403(a)(5)(A)(ii)(I)(dd));

(7) Determines whether to request waivers to select an alternate administering agency consistent with the provisions described at § 645.400 of this part (sections 403(a)(5)(A)(ii)(I)(ee) and 403(a)(5)(A)(vii)(III));

(8) Manages and distributes State level WtW funds (15 percent), consistent with the provisions at §§ 645.410(b) and (c) (section 403(a)(5)(A)(vi)(III));

(9) Ensures that the 15 percent administration limitation and the match requirement are met;

(10) Ensures that worker protections provisions are observed and establishes an appropriate grievance process, consistent with §§ 645.255 through 645.270 of this part (section 403(a)(5)(J));

(11) Provides comments on Competitive Grant Application(s) from eligible entities within the State, consistent with § 645.510 of this part (section 403(a)(5)(B)(ii));

(12) Cooperates with the Department of Health and Human Services on the evaluation of WtW programs (section 403(a)(5)(A)(ii)(III));

(13) Provides technical assistance to PICs or alternate administering agencies; and

(14) Establishes internal reporting requirements to ensure Federal reports are accurate, complete and are submitted on a timely basis, consistent with § 645.240 of this part.

(b) *Private Industry Council (or alternate administering agency) roles and responsibilities.* A PIC:

(1) Has sole authority, in coordination with CEOs, to expend formula funds (section 403(a)(5)(A)(vii)(I) of the Act);

(2) Has authority to determine the individuals to be served in the SDA (section 403(a)(5)(A)(vii)(I));

(3) Has authority to determine the services to be provided in the SDA (section 403(a)(5)(A)(vii)(I));

(4) Ensures funds are expended on eligible recipients and on allowable activities, consistent with § 645.410(a)(5) of this part;

(5) Coordinates WtW fund expenditures with State TANF expenditures and other programs (section 403(a)(5)(A)(ii)(dd));

(6) Ensures that there is an assessment and an individual service strategy in place for each WtW participant, consistent with §§ 645.225(a) and (b) of this part;

(7) Conducts oversight and monitoring of subrecipients, consistent with the provisions at § 645.245 of this part;

(8) Ensures worker protection provisions and grievance process are observed, consistent with State guidelines (section 403(a)(5)(J)); and

(9) Consults with and provides comments on private entity Competitive Grant Application(s), consistent with the provisions at § 645.500(b)(1)(i) of this part.

Subpart E—Welfare-To-Work Competitive Grants

§ 645.500 Who are eligible applicants for competitive grants?

(a) Eligible applicants for competitive grants are:

(1) PICs;

(2) Political subdivisions of a State; and

(3) Private entities including nonprofit organizations such as community development corporations, community-based and faith-based organizations, disability community organizations, community action agencies, and public and private colleges and universities, and other qualified private organizations.

(b) Entities other than a PIC or a political subdivision of the State must submit an application for competitive grant funds in conjunction with the applicable PIC or political subdivision.

(1) The term ''in conjunction with'' shall mean that the application submitted by such an entity must include a signed certification by both the applicant and either the applicable PIC or political subdivision that:

(i) The applicant has consulted with the applicable PIC/political subdivision during the development of the application; and

(ii) The activities proposed in the application are consistent with, and will be coordinated with, WtW efforts of the PIC/political subdivision.

(2) If the applicant is unable to include such a certification in its application, the applicant will be required to certify, and provide information indicating that efforts were undertaken to consult with the PIC/political subdivision and that the PIC/political subdivision was provided a sufficient opportunity to cooperate in the development of the project plan and to review and comment on the application prior to its submission to the Secretary. ''Sufficient opportunity for PIC/political subdivision review and comment'' shall mean at least 30 calendar days.

(3) The certification described in paragraph (b)(1) of this section, or the evidence of efforts to consult described in paragraph (b)(2), must be with each PIC or political subdivision included in the geographic area in which the project proposed in the application is to operate (section 403(a)(5)(B)(ii) of the Act).

§ 645.510 What is the required consultation with the Governor?

(a) All applicants for competitive grants, including PICs and political subdivisions, must consult with the Governor by submitting their application to the Governor or the designated State administrative entity for the WtW program for review and comment prior to submission of the application to the Secretary. The application submitted to the Secretary must include:

(1) Comments on the application from the State; or

(2) Information indicating that the State was provided a sufficient opportunity for review and comment prior to submission to the Secretary. ''Sufficient opportunity for State review and comment'' shall mean at least 15 calendar days.

(b) For private entity applicants, the submission of the application for State review and comment must follow the 30 day period provided for PIC/political subdivision review. Evidence of PIC/political subdivision review should be included in the submission to the State (section 403(a)(5)(B)(ii) of the Act).

§ 645.515 What are the program and administrative requirements that apply to both the formula grants and competitive grants?

(a) All of the general program requirements and administrative standards set by 29 CFR part 645 subpart B apply (section 403(a)(5)(C) and section 404(b) of the Act).

(b) In addition, competitive grants will be subject to:

(1) Supplemental reporting requirements; and

(2) Additional monitoring and oversight requirements based on the negotiated scope-of-work of individual grant awards (section 403(a)(5)(B)(iii) and (v)).

§ 645.520 What are the application procedures and timeframes for competitive grant funds?

(a) The Secretary shall establish appropriate application procedures, selection criteria and an approval process to ensure that grant awards accomplish the purpose of the competitive grant funds and that available funds are used in an effective manner.

(b) The Secretary shall publish such procedures in the **Federal Register** and establish submission timeframes in a manner that allows eligible applicants sufficient time to develop and submit quality project plans (section 403(a)(5)(B)(i) and (iii) of the Act).

§ 645.525 What special consideration will be given to rural areas and cities with large concentrations of poverty?

(a) Competitive grant awards will be targeted to geographic areas of significant need. In developing application procedures, special consideration will be given to rural areas and cities with large concentrations of residents living in poverty.

(b) Grant application guidelines will clarify specific requirements for documenting need in the local area (section 403(a)(5)(B)(iv) of the Act).

Subpart F—Administrative Appeal Process

§ 645.800 What administrative remedies are available under this part?

(a) Within 21 days of receipt of a final determination that has directly imposed a sanction or corrective action pursuant to § 645.250(b) of this part, a recipient, subrecipient, or a vendor directly against which the Grant Officer has imposed a sanction or corrective action, may request a hearing before the Department of Labor Office of Administrative Law Judges, pursuant to the provisions of 29 CFR part 96 subpart 96.6.

(b) In accordance with 29 CFR 96.603(b)(2), the rules of practice and procedure published at 29 CFR part 18 shall govern the conduct of hearings under this section, except that a request for hearing under this section shall not be considered a complaint to which the filing of an answer by DOL or a DOL agency is required. Technical rules of evidence shall not apply to a hearing 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 shall apply.

(c) The decision of the Administrative Law Judge (ALJ) shall constitute final agency action unless, within 20 days of the decision, a party dissatisfied with the decision of the ALJ has filed a petition for review with the Administrative Review Board (ARB) (established pursuant to the provisions of Secretary's Order No. 2–96, published at 61 Fed. Reg. 19977 (May 3, 1996)), specifically identifying the procedure, fact, law or policy to which exception is taken. Any exception not specifically urged shall be deemed to have been waived. A copy of the petition for review must be sent to the opposing party at that time. Thereafter, the decision of the ALJ shall constitute final agency action unless the ARB, within 30 days of the filing of the petition for review, has notified the parties that the case has been accepted for review. Any case accepted by the ARB shall be decided within 120 days of such acceptance. If not so decided, the decision of the ALJ shall constitute final agency action.

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