DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 652 and Parts 660 through 671

RIN 1205–AB20

Workforce Investment Act

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

ACTION: Interim Final Rule; request for comments.

SUMMARY: The Department of Labor (DOL) is issuing an Interim Final Rule implementing provisions of titles I, III and V of the Workforce Investment Act. Through these regulations, the Department implements the first major reform of the nation's job training system in more than 15 years. Key components of this reform include streamlining services through a One-Stop service delivery, empowering individuals through information and access to training resources through Individual Training Accounts, providing universal access to core services, increasing accountability for results, ensuring a strong role for Local Boards and the private sector in the workforce investment system, facilitating State and local flexibility, and improving youth programs.

DATES: This Interim Final Rule will become effective on May 17, 1999.

Comment Period: Comments must be submitted by July 14, 1999. The Department cannot guarantee that comments received after this date will be considered. Comments that are less than 10 pages in length may be transmitted via a facsimile at (202) 219–0323 provided that submission of written text follows. Commenters wishing acknowledgment of receipt of their comments must submit them by certified mail, return receipt requested. Also, comments may be sent electronically using the Internet web page at http://usworkforce.org.

ADDRESSES: Submit written comments to the Employment and Training Administration, Workforce Investment Act Implementation Taskforce, 200 Constitution Avenue, NW, Room S5513, Washington, DC 20210, *Attention:* Eric Johnson.

All comments will be available for public inspection and copying during normal business hours at the Employment and Training Administration, Workforce Investment Act Implementation Taskforce, 200 Constitution Avenue, NW, Room S5513, Washington, DC 20210. Copies of the Interim Final Rule are available in 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 WIA website at http://usworkforce.org

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 N–2101, Washington, DC 20210, as the recipient of petitions to review this Interim Final Rule.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Johnson, Workforce Investment Act Implementation Taskforce Office, U.S. Department of Labor, 200 Constitution Avenue, NW, Room S5513, Washington, DC 20210, Telephone: (202) 219–0316 (voice) (this is not a toll-free number) or 1–800–326–2577 (TDD).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

Certain sections of this Interim Final Rule, such as §§ 667.300, 667.900, 668.800, and 669.570 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Labor has submitted a copy of these sections to the Office of Management and Budget for its review. Comments must be submitted by May 17, 1999 to: Desk Officer for the Department of Labor, Employment Training Administration, Office of Management and Budget, 725 17th Street, NW (Rm 10235), Washington DC 20503. Affected parties do not have to comply with the information collection requirements in this document 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. An OMB control number (1205–0398) was issued for the WIA state planning guidance authorized under 20 CFR 661.220, and published at 64 FR 9402 (Feb. 25, 1999).

I. Background

A. WIA Principles

On August 7, 1998, President Clinton signed the Workforce Investment Act of 1998 (WIA), comprehensive reform legislation that supersedes the Job Training Partnership Act (JTPA) and amends the Wagner-Peyser Act. The WIA also contains the Adult Education and Family Literacy Act (title II) and the Rehabilitation Act Amendments of 1998 (title IV). Guidance or regulations implementing titles II and IV will be issued by the Department of Education.

The WIA reforms Federal job training programs and creates a new, comprehensive workforce investment system. The reformed system is intended to be customer-focused, to help Americans access the tools they need to manage their careers through information and high quality services, and to help U.S. companies find skilled workers.

This new law embodies seven key principles. They are:

- *Streamlining services* through better integration at the street level in the One-Stop delivery system. Programs and providers will co-locate, coordinate and integrate activities and information, so that the system as a whole is coherent and accessible for individuals and businesses alike.
- *Empowering individuals* in several ways. First, eligible adults are given financial power to use Individual Training Accounts (ITA's) at qualified institutions. These ITA's supplement financial aid already available through other sources, or, if no other financial aid is available, they may pay for all the costs of training. Second, individuals are empowered with greater levels of information and guidance, through a system of consumer reports providing key information on the performance outcomes of training and education providers. Third, individuals are empowered through the advice, guidance, and support available through the One-Stop system, and the activities of One-Stop partners.
- *Universal access.* Any individual will have access to the One-Stop system and to core employment-related services. Information about job vacancies, career options, student financial aid, relevant employment trends, and instruction on how to conduct a job search, write a resume, or interview with an employer is available to any job seeker in the U.S., or anyone who wants to advance his or her career.
- *Increased accountability.* The goal of the Act is to increase employment, retention, and earnings of participants, and in doing so, improve the quality of the workforce to sustain economic growth, enhance productivity and competitiveness, and reduce welfare dependency. Consistent with this goal, the Act identifies core indicators of performance that State and local entities managing the workforce investment system must meet—or suffer sanctions. However, State and local entities

exceeding the performance levels can receive incentive funds. Training providers and their programs also have to demonstrate successful performance to remain eligible to receive funds under the Act. And participants, with their ITA's, have the opportunity to make training choices based on program outcomes. To survive in the market, training providers must make accountability for performance and customer satisfaction a top priority.

- *Strong role for local workforce investment boards and the private sector,* with local, business-led boards acting as ''boards of directors,'' focusing on strategic planning, policy development and oversight of the local workforce investment system. Business and labor have an immediate and direct stake in the quality of the workforce investment system. Their active involvement is critical to the provision of essential data on what skills are in demand, what jobs are available, what career fields are expanding, and the identification and development of programs that best meet local employer needs. Highly successful private industry councils under JTPA exhibit these characteristics now. Under WIA, this will become the norm.
- *State and local flexibility.* States and localities have increased flexibility, with significant authority reserved for the Governor and chief elected officials, to build on existing reforms in order to implement innovative and comprehensive workforce investment systems tailored to meet the particular needs of local and regional labor markets.
- *Improved youth programs* linked more closely to local labor market needs and community youth programs and services, and with strong connections between academic and occupational learning. Youth programs include activities that promote youth development and citizenship, such as leadership development through voluntary community service opportunities; adult mentoring and followup; and targeted opportunities for youth living in high poverty areas.

Many States and local areas have already taken great strides in implementing these principles, supported by grants from the Department of Labor to build One-Stop service delivery systems and school-to-work transition systems. The Act builds on these reforms and ensures that they will be available throughout the country.

The Department wishes to emphasize that it considers the reforms embodied in the Workforce Investment Act to be pivotal, and not ''business as usual.'' This legislation provides unprecedented opportunity for major reforms that can result in a reinvigorated, integrated workforce investment system. States and local communities, together with business, labor, community-based organizations, educational institutions, and other partners, must seize this historic opportunity by thinking expansively as they design a customer-focused, comprehensive delivery system.

The success of the reformed workforce investment system is dependent on the development of true partnerships and honest collaboration at all levels and among all stakeholders. While the Workforce Investment Act and these regulations assign specific roles and responsibilities to specific entities, for the system to realize its potential necessitates moving beyond current categorical configurations and institutional interests. Also, it is imperative that input is received from all stakeholders and the public at each stage of the development of State and local workforce investment systems.

The cornerstone of the new workforce investment system is One-Stop service delivery which unifies numerous training, education and employment programs into a single, customer-friendly system in each community. The underlying notion of One-Stop is the coordination of programs, services and governance structures so that the customer has access to a seamless system of workforce investment services. It is envisioned that a variety of programs could use common intake, case management and job development systems in order to take full advantage of the One-Stops' potential for efficiency and effectiveness. A wide range of services from a variety of training and employment programs will be available to meet the needs of employers and job seekers. The challenge in making One-Stop live up to its potential is to make sure that the State and Local Boards can effectively coordinate and collaborate with the network of other service agencies, including TANF agencies, transportation agencies and providers, metropolitan planning organizations, child care agencies, nonprofit and community partners, and the broad range of partners who work with youth.

B. Early Implementation

Many States have expressed interest in which features of WIA may be phased-in after approval of the State workforce investment plan, and how long they will have before they must be in full compliance.

- The planning guidance (which was published in the **Federal Register** on February 25, 1999) and regulations specify that States may submit a State workforce investment plan to the Department for approval at any time between April 1, 1999 and April 1, 2000. For those States that plan to transition to WIA prior to July 1, 2000, and do not have all policies, procedures and systems fully developed, the State may submit a Transition Plan that outlines when the State expects to have each of the WIA components (for example, the One-Stop system, or the Individual Training Account system) fully operational. All components must be in place by July 1, 2000. Under this option, the Department will conditionally approve the State workforce investment plan. The State workforce investment plan will be fully approved once all of the WIA components are in place. This option provides some flexibility for early implementing States, while ensuring that full implementation is completed for all States by July 1, 2000.
- States and local areas may use the current waiver authority and allowable activities under JTPA, to plan for and implement WIA reforms. Activities that are allowable during this phase include: (1) Strategic planning; (2) establishment of State and local workforce investment boards; (3) consultation with One-Stop partners; (4) establishment of ITA systems; and (5) establishment of consumer report systems.
- Because JTPA title II youth funds are available for obligation on April 1, 1999, the Calendar Year 1999 Summer Youth Employment and Training Program, and JTPA title II–C youth program allocations have been made and are to be allocated by States to local areas under the JTPA rules. The Department will issue transition guidance which will provide further direction and specification.
- A 90 percent hold harmless provision for within-State allocations for the youth and adult funding streams, that is based on allocations in the first two years of WIA operation, becomes effective in the third year a State operates under WIA. Structured to facilitate creation of new local areas by freeing States from allocation formulas established under JTPA, there is no hold harmless provision effective in the first two years of a state's WIA implementation that would cover the transition period from JTPA. The lack of a hold harmless provision during this period could result in some instability during the early stages of WIA implementation. However, Governors do have options available to promote stability. For program year 1999 only, the Governor may elect to utilize the

JTPA hold harmless provision. However, in doing so, the two year hold harmless is delayed for one year. Therefore, if a State elects to use this option, the two year hold harmless would apply for PY 2000 and 2001 unless Congress decides to address this area with a technical amendment. Also, Governors may use some of their 15 percent State reserve funds to assist local areas that are negatively impacted by the WIA funding formulas, or choose to adopt an adult or youth within-State allocation formula that incorporates additional targeting factors, provided for in sections 128 and 133 of WIA.

C. Rule Format

The format, as well as the substance, of the Interim Final Rule, reflects the Administration's commitment to regulatory reform and to writing regulations that are reader-friendly. The Department has attempted 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 regulatory text is presented in a ''question and answer'' format. The Department has organized the regulations in a way that will help those who must implement the new system to recognize the various steps they must take as they develop the organization and services that make up the workforce investment system. In many cases, the provisions of WIA are not repeated in these regulations. As requested by some interested parties, however, in a number of instances, it was determined that the regulations would provide context and be more reader-friendly if the Act's provisions were included in an answer rather than merely cross-referencing the statute.

Section 506(c)(1) of the Act requires the Secretary of Labor to issue this Interim Final Rule implementing provisions of the WIA under the Department's purview within 180 days of enactment. WIA also requires that final regulations be published by December 31, 1999. Under Secretary of Labor's Order No. 4–75, the Assistant Secretary for Employment and Training has been delegated the responsibility to carry out WIA policies, programs, and activities for the Secretary of Labor.

Given the short time frame imposed, the Department has employed a variety of means to initiate extensive coordination with other Federal agencies that have roles and responsibilities under the Workforce Investment Act. In addition, the Department of Labor, the Department of Education, the Department of Health and Human Services, the Department of Transportation, and the Department of Housing and Urban Development continue to meet on a regular basis to resolve issues surrounding the development of the Interim Final Rule and WIA implementation.

The Department also requested and received input from a broad range of sources regarding guidance on how to comply with a number of WIA statutory provisions. The Department solicited broad input on WIA implementation through a variety of mechanisms: establishing a website to encourage input; publishing a **Federal Register** notice on September 15, 1998, conducting regional and national panel discussions in October 1998; publishing a White Paper announcing goals and principles governing implementation; posting issues on the usworkforce.org website; sharing a discussion draft of regulatory issues with stakeholders; holding town hall meetings across the country in December 1998; conducting several workgroups in December 1998; and issuing draft Planning Guidance in December 1998.

A number of the suggestions received are discussed in the Summary and Explanation of the individual provisions of the Interim Final Rule. However, because of the large volume of suggestions received and the short time allowed for preparation of the regulations, as well as the fact that suggestions continue to be received, it was not possible to address each one. Where input has not been addressed, it will be considered along with comments on the Interim Final Rule before publication of the Final Rule. Also, the Department will ensure that there are other opportunities for public input and dialogue on the important issues surrounding implementation of the Workforce Investment Act prior to the publication of the Final Rule.

The Department has determined that this Interim Final Rule, as promulgated, complies with the WIA statutory mandate and provides effective direction for the implementation of WIA programs. ETA will review all comments received in the development of and response to the Interim Final Rule, as well as the experience of early implementing States, in considering what further action is necessary in promulgating a Final Rule.

II. Summary and Explanation

This section describes and explains the specific provisions of the Interim Final Rule. The explanatory text, in general, adheres closely to the corresponding WIA statutory and regulatory language. A supporting rationale is provided in those instances where the Rule promulgates specific provisions to fulfill the requirements of the WIA statute.

The Department has set regulations only where they are necessary to clarify or to explain how the Department intends to interpret the WIA statute, to provide context for interpretations or to provide a clear statement of the Act's requirements. In several instances—for example, the Indian and Native American Programs, and Migrant and Seasonal Farmworker Programs—the regulations were developed in consultation with advisory councils and are more comprehensive in order to assist those grantees. 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 WIA administration. The Department has not defined what constitutes many of the activities under the Act in order to provide policy-making flexibility to States and local areas. Section 661.120 formalizes this flexibility in the regulations.

Description of Regulatory Provisions

The Rule adds 12 new parts to the Code of Federal Regulations, and a new subpart to the existing Wagner-Peyser Act regulations. Parts 660–672 are organized by subject matter; for example, 661 describes State and local system design, 667 contains administrative requirements applicable to WIA title I funds, and 669 describes requirements particularly applicable to Migrant and Seasonal Farmworker programs. This discussion section follows that organizational structure.

Part 660—Introduction to the Regulations for the Workforce Investment Systems Under Title I of the Workforce Investment Act

Part 660 discusses the purpose of title I of the Workforce Investment Act, explains the format of the regulations governing title I, and provides definitions which are not found in the Act. Sections 101, 142, 166(b), 167(h) 301 and 502 of the Act contain additional definitions. Among the regulatory definitions, the Department has defined the term ''register'' in order to clarify that programs do not need to register participants until they receive a core service beyond those that are self-service or informational. This point in time also corresponds to the point when the EEO data must be collected, when the eligibility definition begins, and when the participants are counted for performance measurement purposes.

Part 661—Statewide and Local Governance of the Workforce Investment System Under Title I of the Workforce Investment Act

Introduction

This part covers the critical underpinnings of how the workforce investment system is organized under WIA at the State and local levels. Specifically, it consists of four subparts—General Governance, State Governance, Local Governance Provisions and Waiver Provisions. The General Governance subpart broadly describes the WIA system and sets forth the roles of the governmental partners. The State and local subparts cover the State and local workforce investment boards and the designation process, including alternative entities, and the planning requirements. The waiver subpart discusses the processes for obtaining general and work-flex waivers.

Subpart A—General Governance Provisions

1. Subpart A describes the workforce investment system, and sets forth the roles of the government partners in the system: the Federal government, State governments and local governments. The workforce investment system is the method of delivery of workforce investment activities to individuals under title I of WIA, and is composed of State and local workforce investment boards, local workforce investment areas, and the One-Stop system. Through the One-Stop system, the workforce investment system is a gateway to a wide variety of employment, training, educational and other human resource programs. In the Department's view, close cooperation and coordination among the Federal, State and local government partners are essential to the system's success in providing services to those who need them. Sections 661.110 and 661.120, describe, in general terms, the roles of the government partners. The Department sees one of its roles as Federal partner as providing leadership, guidance and support to the system, so that State and local governmental partners can better respond to the needs of customers. To that end, the WIA regulations are intended to provide a framework in which States and local partners may design systems and deliver services in ways that best achieve the goals of WIA based on particular need. Thus, whenever possible, items such as design options and categories of service are not narrowly defined in the regulations. Section 660.120 provides authority to State and local governments to establish their own policies, interpretations, guidelines and definitions relating to program operations under title I, as long as they are not inconsistent with WIA or the regulations, and, in the case of local governments, not inconsistent with State policies. To assist with such interpretations, the Department, with the participation of other Federal agencies, as appropriate, will issue technical assistance guidance to help States and localities interpret WIA and the regulations. Such guidance is not intended to limit State flexibility, but rather is intended to provide helpful models on which States and local governments can rely to ensure that their own interpretations are not inconsistent with the Act and regulations.

Subpart B—State Governance Provisions

1. *State Workforce Investment Board:* Sections 661.200—661.210 describe the membership requirements and responsibilities of the State Workforce Investment Board (State Board) and procedures regarding designation of an alternative entity to perform the functions of the State Board. The role of the State Board is to assist the Governor in the development of the State workforce investment plan (State Plan) and to carry out the additional functions described in WIA section 111(d). Section 661.200 describes the membership requirements of the State Board. This section clarifies that State Boards must contain two or more members from each of the representative categories described in sections 111(b)(1)(C)(iii)–(v) of WIA. These categories are labor organizations, individuals and organizations that have experience with youth activities, and individuals and organizations that have experience and expertise in the delivery of workforce investment activities. The Rule requires that, in appointing representatives with experience in workforce investment activities, special consideration be given to chief executive officers of community colleges and community-based organizations in the State. The Department acknowledges the special expertise that the community college system brings to the workforce investment system. The Department foresees a strong role for community colleges across states and in local areas and encourages states and local areas to appoint presidents and executive officers of the state community college system and local community colleges to the State and Local Workforce Investment Boards. The Department also emphasizes the importance of including the director of the state agency responsible for TANF on the State Board, in order to foster linkages between WIA and TANF, and to facilitate participation of TANF in One-Stop systems in the state.

The Department also received suggestions concerning the representation of the State Vocational Rehabilitation Services program, a required One-Stop partner, on the State Board. Individuals with disabilities represent a large untapped potential workforce, and the workforce needs of this group is of significant importance to the Department and other Federal agencies. To signal the importance of this issue, the Presidential Taskforce on Employment of Adults with Disabilities was formed in 1998. In light of this emphasis on increasing the employment rate for individuals with disabilities as well as the complexity of the organizational requirements applicable to this program, the director of the designated State unit under section 101(a)(2)(B)(ii)(II) of the Rehabilitation Act, if a State has such a unit, should be considered the lead State agency official with responsibility for the State's vocational rehabilitation program and, therefore, should serve on the State Board. In addition, a program operated by a State agency for the blind or by a designated State unit for the blind should be considered a separate program for purposes of appointing members to the State Board under WIA section 111. Among the contributions the unit head(s) would make as a member of the State Board is assisting in the development of the State performance measures. The expertise of the unit head(s) would be particularly useful since the Department, in coordination with the Department of Education, will be working on the development of an additional performance indicator focusing on individuals with disabilities that may be used by States under title I of WIA. The Department of Labor and the Department of Education will work with the States as they develop and implement their State plans to ensure the effective delivery of services under the WIA to individuals with disabilities. The Department will also be conducting a study of WIA implementation that will include a review of the manner and extent to which Vocational Rehabilitation programs are integrated in the workforce investment system, and how effectively the system serves individuals with disabilities.

As discussed below, regarding local workforce investment board (Local Board) membership requirements, the

Department received substantial input expressing concern that the statutory membership requirements relating to the State and local boards will lead to large, unmanageable State and Local Boards. In contrast, others thought larger boards would be better in representing a wider array of interests. The Department recognizes this concern, and, although constrained by the statutory requirements that each category of membership contain more than one representative and a business majority, the Department has avoided adding additional requirements relating to the number of members required. The Department believes that problems associated with large board size can be addressed in a number of ways, such as the use of committees. The Department will be providing technical assistance on creative approaches State and Local Boards may wish to consider in addressing this issue.

2. *Alternative Entities:* The Department believes that changing from existing JTPA boards and councils to State Boards meeting the requirements of WIA section 111(b) is essential to the reforms of WIA. The Department encourages all States to create new, fully functional State Boards as early as possible, and is committed to providing assistance to States to make such changes. In order to accommodate States that have already begun to reform their boards prior to the enactment of WIA, the statute provides an option to use an existing entity to carry out the functions of the State Board. Section 661.210 describes the requirements relating to the appointment of this alternative entity. Because of questions regarding the application of these requirements, paragraph (b) of § 661.210 makes clear that an alternative entity must meet each of the three criteria set forth in WIA section 111(e). The three criteria are that the entity: (1) Was in existence on December 31, 1997; (2)(a) was established pursuant to section 122 or title VII of the Job Training Partnership Act, as in effect on December 31, 1997, or (b) is substantially similar to the State Board as described in subsections (a), (b), and (c) of WIA section 111; and (3) includes representatives of business in the state and representatives of labor organizations in the state. An entity which fails to meet any one of the criteria is not eligible to perform the functions of the State Board. A key requirement for an alternative entity that was not created under JTPA, is that it be substantially similar to the Boards required under WIA. The Department considered various ways to define the term ''substantially similar'' but, in the end, decided to leave the term undefined. All groups required for membership on Workforce Investment Boards are equally important and the Department sees alternative entities as a transitional phase during which states can operate until a new Board is appointed.

While an alternative entity need not contain the identical membership structure required of State Boards, in the Department's view it is important that each of the groups listed in WIA section 111(b) have a role in the workforce investment system if the system is to be successful. Therefore, the Rule requires that if the Governor identifies an alternative entity, the State Plan must explain how the State will ensure the ongoing participation of any omitted membership groups in the functions of State workforce investment system. While this Rule does not mean that omitted groups must be seated on an alternative entity, it does require that the State Plan describe how these groups will have an opportunity for meaningful input into decisions made by the State Board.

Paragraph (d) of § 661.210 amplifies the requirement that an alternative entity must have been established by and in existence on December 31, 1997. Because of this requirement, modifications to the alternative entity are not allowed; a change to the membership structure after December 31, 1997 will invalidate the entity's eligibility as an alternative entity. The membership structure is not considered to be changed when an existing member leaves the board and a replacement member is appointed. However, the membership structure is considered to be changed when a change is made to the organizational structure of the State Board that requires a change (whether the change is formally made or not) in the State Board's charter or to a similar document that defines the organizational structure of the State Board, such as appointing members of a category not previously represented. In such a case, the entity would no longer be eligible to perform the functions of the State Board and a new entity, meeting all the requirements of section 111 of WIA must be created. This prevents piecemeal modification of alternative entities that would add certain section 111(b) membership categories but not others.

3. *State Workforce Investment Plan Requirements:* Sections 661.220 and 661.230, describe the requirements for submission, approval and modification of the State workforce investment plan. The State Plan must be submitted in accordance with planning guidelines to be issued by the Secretary, and must be developed through an open public comment process. The State Plan must document the timeline and the steps taken to ensure the opportunity for meaningful public comment. The Department intends that the information contained in the State Plan be subject to the broadest possible stakeholder involvement in policy development and the broadest possible range of public comment. The planning guidelines set forth the information needed for the Secretary to make an informed judgment as to whether a State Plan is consistent with WIA. The Rule restates the statutory language regarding the process for State Plan approval. All plans must be approved within 90 days unless the Secretary determines in writing that the State Plan is inconsistent with the provisions of title I of WIA and its implementing regulations or it does not satisfy the State Plan approval requirements of the Wagner-Peyser Act and its implementing regulations. This reflects changes made by the technical corrections added in the Omnibus Appropriations Act for FY 1999, which clarified that the State plan will not be approved if it fails to meet the requirements of either WIA or the Wagner-Peyser Act rather than only when it fails to meet both. Failure to have completed negotiations with the Secretary of Labor on performance measures means the plan is not consistent with title I of WIA. A state's failure to have an effective strategy in place to ensure the development of a fully operational One-Stop delivery system in the state also means the state plan is not consistent with WIA title I. An important part of this strategy is an impasse procedure designed to facilitate collaboration and coordination between One-Stop partners at the local level.

4. *State Plan Modifications:* Section 661.230 provides the approval process for State Plan modifications. It clarifies that modifications may be made at any time during the life of the State Plan, and must be made upon certain conditions. Because the State Plan is a five year strategic plan and designed to be a living document, it is likely that assumptions based upon such things as State or Federal policy, economic conditions, performance goals, State and local organizational structures and/or State and local needs may change during the course of the State Plan. The provision for a five year State Plan was intended to reduce paperwork burdens on the States. Accordingly, only significant changes require a modification. Examples are: changes in performance indicators, changes in the

methodology used to determine local allocation of funds, or changes to the membership structure of the State Board or alternative entity. Modifications triggered by significant changes will be subject to the same review process as the original State Plan. While it is impossible to foresee all such changes that may occur during a five year period, through timely modifications of the State Plan, State strategies can continue to guide Local Board policy development. The Secretary must approve all State Plan modifications unless the disapproval criteria in § 661.220 are met.

5. *Local Workforce Investment Area Designation Requirements:* Sections 661.250 through 661.280 discuss the requirements applicable to the designation of local workforce investment areas. The Rule tracks the statutory language regarding the State Board recommendation and Governor's approval process for designation. It refers to the statutory provisions regarding automatic designation of areas with a population of 500,000 or more (that request designation) at section 116(a)(2) of WIA and temporary and subsequent designation of JTPA service delivery areas meeting certain performance criteria (that request designation) at section 116(a)(3) of WIA. The statute prohibits the Department from further regulating on the standards and criteria for temporary and subsequent designation and requires the Department to provide the States with technical assistance to make the designations. The regulations restate the statutory language regarding the rights of areas to appeal the denial of a request for automatic or temporary and subsequent designation as a local workforce investment area.

6. *Regional Planning Activities:* Section 661.290 describes the circumstances in which the State may require Local Boards to take part in regional planning activities. This provision permits States to undertake methods to improve performance across area boundaries by requiring local areas to engage in a regional planning process to share employment-related information and to coordinate the provision of local services pursuant to that regional planning. The regulation follows the statutory language regarding the requirements for regional planning, and permits regional planning to occur across State boundaries. Section 661.290 clarifies that Local Boards which are part of State-designated regional planning areas must participate in regional planning activities. However, to strike a balance, the regulation also provides that regional planning and performance requirements may not substitute for the local planning and performance requirements unless the affected chief elected officials and the Governor agree to that substitution.

Subpart C—Local Governance Provisions

This Subpart covers the designation of local workforce investment areas and the responsibilities and membership requirements of local boards.

1. *Role of the Local Workforce Investment Board:* Under WIA, the Local Board, in partnership with the chief elected official, is responsible for setting policy and overseeing workforce investment programs for a workforce investment area. Sections 661.300 and 661.305 reiterate the roles and responsibilities of Local Boards. There was some concern expressed that the Local Board activities be carried out in an open manner which encourages public comment and participation. The Department responds to these concerns by restating the WIA section 117(e) ''sunshine provision'' in § 661.305(d).

2. *Local Boards as Service Providers:* Section 117(f)(1) of WIA places limitations on Local Boards' direct provision of core services, intensive services, or training services. In response to requests for clarification, § 661.310(c) specifies that the prohibition related to providing core, intensive and training services by the Local Board also applies to the staff of the Local Board. This regulation also cites the statutory provision allowing a Local Board to be designated or certified as a One-Stop operator only with the agreement of the chief elected official and the Governor.

3. *Membership Requirements:* Section 661.315 of the regulations addresses the membership requirements for the Local Board that are contained in section 117(b) of WIA. There were suggestions on several issues related to the required membership of the Local Board, particularly as to how the terms ''representatives'' and ''including'' would be defined.

Representatives: Some parties expressed the view that the term ''representatives,'' as used in section 117(b)(2)(A) (ii)–(v) of WIA, requires that there be multiple representatives from each of the specified entities. While others wanted a more restrictive definition, the regulations specify that the Local Board must contain two or more members representing the categories described in section 117(b)(2)(A) (ii)–(v) of WIA. These categories cover different types of local educational entities, labor organizations, community-based organizations (including those representing individuals with disabilities and veterans), and economic development agencies.

Including: There also were many questions on the meaning of the term ''including'' as it is used in WIA section 117(b). Some expressed the view that each of the entities following the word ''including'' in section 117(b)(2)(A)(ii), (iv), and (v) of WIA must be a required member of the Local Board, while others disagreed with this interpretation. The regulations address this issue by requiring that special consideration be given to including representatives of community colleges in the selection of members representing local educational entities; to including representatives of organizations representing individuals with disabilities and veterans, in selection of members representing community-based organizations; and representatives of private sector economic development entities in selecting representatives of economic development agencies. The regulations do not mandate a membership seat for each such entity.

Board Size: The Department heard many concerns that the statutory membership requirements relating to Local Boards will lead to large, unwieldy, and unmanageable Local Boards. The Department recognizes this concern, and while the Department is constrained by the statutory requirements that each category of membership contain more than one representative and that the board contain a business majority, the Department has not added additional regulatory requirements on the number of members required. The Department believes that problems associated with large board size can be addressed in a number of ways, such as through the use of committees. The Department will provide technical assistance on creative approaches State and Local Boards may wish to consider in addressing this issue.

4. *Alternative Entity:* The Department believes that changing from existing JTPA Private Industry Councils to local workforce investment boards is essential to the reforms of WIA. The Department strongly encourages all eligible areas to create new, fully functional Local Boards as early as possible, and is committed to providing assistance to facilitate such changes. However, the Department recognizes that the statute provides an option to use an existing entity to carry out the functions of the Local Board. Section 661.330 describes the requirements relating to the appointment of such an alternative entity. Because of questions regarding

the application of these requirements, paragraph (a) of § 661.330 makes clear that an alternative entity must meet each of the four criteria set forth in WIA section 117(i), including the requirement that the alternative entity must have been established by December 31, 1997. An entity which fails to meet any one of these criteria is not eligible to perform the functions of the Local Board.

While an alternative entity need not contain the identical membership structure as that required of Local Boards, section 117(i)(1)(c)(ii) does require the alternative entity to be substantially similar to the Local Boards. In the Department's view it is extremely important that each of the groups listed in section 117(b)(2) have an active role in the workforce investment system if the system is to be successful. Therefore, the Rule requires that the alternative entity be identified in the State Plan and the local workforce investment plan, and that these workforce investment plans explain the manner in which the Local Board will ensure the ongoing participation of any omitted membership groups in the local workforce investment area. While this Rule does not require that such groups be seated on the Board, it does require the State and local workforce investment plans to describe the means by which such groups will have periodic regular meaningful opportunities for input into decisions made by the Local Board.

Paragraph (c) of § 661.330 amplifies the requirement that an alternative entity must have been established by and in existence on December 31, 1997. Because of this requirement, modifications of the alternative entity are not allowed; any change to the membership structure will invalidate the entity's eligibility as an alternative entity. The membership structure is not considered to be changed when an existing member leaves the Local Board and a replacement member is appointed. However, it is considered to be changed when a change is made to the organizational structure of the Local Board that requires a change (whether the change is formally made or not) in the Local Board's charter or to a similar document that defines the organizational structure of the Local Board, such as appointing members of a category not previously represented. In that case, the entity is no longer eligible to perform the functions of the Local Board and a new entity, meeting all the requirements of section 117 of WIA must be created. This prevents piecemeal modification of alternative entities that would add certain WIA section 117(b)(2) membership categories, but not others.

5. *Youth Council:* Section 117(h) of WIA establishes youth councils as a subgroup of the Local Boards. Youth councils are an innovative new entity intended to broaden participation in the design and delivery of youth services at the local level. Section 661.335 describes the relationship of the youth council to the Local Board as well as the membership requirements and § 661.340 explains the responsibilities of the youth council, as described in section 117(h) of WIA.

6. *Local Workforce Investment Plan:* Sections 661.345 and 661.350 describe the requirements for the submission of the local workforce investment plan (Local Plan) and the contents of the Local Plan. Section 661.350 enumerates the Local Plan components outlined in WIA section 118(b). The Local Plan also must include information on the process for directing the One-Stop operators to give priority to low-income individuals and recipients of public assistance in the event that adult funds are limited, as required by WIA section 134(d)(4)(E). This priority is discussed in more detail under § 663.600.

Section 118 of WIA indicates that Local Plans cover a five year period. Some parties suggested that modifications to the local plan will likely be needed within the five year span. The Department concurs, and the regulations permit the Governor to require local plan modifications and, at § 661.355, offer a few examples of when such modifications might be required by the Governor. Section 661.355 states that the Governor must establish procedures for Local Plan modifications.

Subpart D—Waivers and Workflex

Subpart D indicates the elements of WIA and the Wagner-Peyser Act that may and may not be waived under either the General Waiver Authority or the Work Flex provision. The purpose of the general statutory and regulatory waiver authority provided by section 189(i)(4) and workforce flexibility waiver authority provided at section 192 is to give flexibility to States and local areas in the design and implementation of consolidated workforce development programs under WIA. The regulations specify that the Secretary does not intend to waive any of the key elements of the reform principles embodied in the Act (listed in the background section of this preamble and in § 661.400), except in extremely unusual circumstances. It also specifies that the provisions that incorporate the reform principles embodied in the Act may not be waived under the Work Flex authority.

Part 662—Description of the One-Stop System Under Title I of the Workforce Investment Act

Introduction

The establishment of a One-Stop delivery system for workforce development services is a cornerstone of the reforms contained in title I of WIA. This delivery system streamlines access to numerous workforce investment and educational and other human resource services, activities and programs. The Act's requirements build on reform efforts that are already underway in all States through the Department's One-Stop grant initiative. Rather than requiring individuals and employers to seek workforce development information and services at several different locations, which is often costly, discouraging and confusing, WIA requires States and communities to integrate multiple workforce development programs and resources for individuals at the ''street level'' through a user friendly One-Stop delivery system. This system will simplify and expand access to services for job seekers and employers.

The Act specifies nineteen required One-Stop partners and an additional five optional partners to streamline access to a range of employment and training services. WIA requires coordination among all Department of Labor funded programs as well as other workforce investment programs administered by the Departments of Education, Health and Human Services, and Housing and Urban Development. WIA also encourages participation in the One-Stop delivery system by other relevant programs, such as those administered by the Departments of Agriculture, Health and Human Services, and Transportation, as well as the Corporation for National and Community Service. In addition, local areas are authorized to add additional partners as local needs may require. All of these Federal Agencies will continue to work together to ensure effective communication and collaboration at the Federal level in support of One-Stop service delivery.

Subpart A—One-Stop Delivery System

1. *Structure:* Subpart A describes the structure of a One-Stop delivery system. The regulation, at § 662.100, describes the One-Stop system as a seamless system of service delivery that is created through the collaboration of entities responsible for separate workforce development funding streams. The One-Stop system is designed to enhance access to services and improve outcomes for individuals seeking

assistance. The regulation specifically defines the system as consisting of one or more comprehensive, physical One-Stop centers in a local area that provides the core services specified in WIA section 134(d)(2) and that provide access to the other activities and programs provided under WIA and by each One-Stop partner. In locating each comprehensive center, Local Boards should coordinate with the broader community, including transportation agencies, to ensure that the centers are accessible to their customers. In addition to the comprehensive centers, the regulation notes that WIA allows for three other arrangements to supplement the comprehensive center. These supplemental arrangements include: (1) A network of affiliated sites that provide one or more of the programs, services and activities of the partners; (2) a network of One-Stop partners through which the partners provide services linked to an affiliated site and through which all individuals are provided information on the availability of core services in the local area; and (3) specialized centers that address specific needs. In essence, this structure may be described as a ''one right door and no wrong door'' approach. One-Stop partners have an obligation to ensure that core services that are appropriate for their particular populations are made available at one comprehensive center. If an individual enters the system through one of the network sites rather than the comprehensive One-Stop center, the individual may still obtain certain services at the network site and information about how and where all the other services provided through the One-Stop system may be obtained.

Subpart B—One Stop Partners

1. *Responsibilities:* Subpart B identifies the One-Stop partners and their responsibilities in the One-Stop delivery system. The required partners are entities that carry out the workforce development programs. They are specifically identified in section 121(b)(1) of WIA and § 662.200. The regulation at § 662.200(a)(1)(i through vii) separately specifies the funding streams under title I that are included as required partners. The regulations also identify the other required programs, with some clarification of the particular sections of certain Acts (for example, the Vocational Rehabilitation Act and the Carl D. Perkins Act) that authorize the program that must participate. Section 662.210 identifies additional partners that may be a part of the One-Stop system at local option.

Entities—The regulation at § 662.220 provides a general definition of the ''entity'' that carries out the specified programs and serves as the partner. In light of the responsibilities of the partners, which are described below and include decisions regarding the use and administration of program resources, the regulation defines the entity as the grant recipient or other entity or organization responsible for administering the program's funds in the local area. The term ''entity'' does not include service providers that contract with or are subrecipients of the local entity. The regulation notes that for programs that do not have local administrative entities, the responsible State agency may be the One-Stop partner. In addition, the regulation specifies the appropriate entity to serve as partner for the Adult Education and Vocational Rehabilitation programs. Entities that serve as the partner under the Indian and Native American, Migrant and Seasonal Farmworker, Job Corps, and Youth programs are identified in the sections of the regulations applicable to those programs.

Partner Responsibilities—This subpart also describes and elaborates on the statutory responsibilities of the partners. The regulation at § 662.230 identifies the five provisions of the Act that describe these responsibilities. One of the key responsibilities of each partner is to make available at the comprehensive center through the One-Stop system appropriate core services that are applicable to the partner's program. The regulation at § 662.240 lists the core services that are described in section 134(d)(2) of WIA, and defines ''applicable'' to mean the services from that list that are authorized and provided under the partner programs. The extent to which core services are applicable to a partner program, as well as the manner in which services are provided, are determined by the program's authorizing statute.

Availability of Services—The regulation at § 662.250 describes where and to what extent the One-Stop partners must make available the applicable core services. Since section 134(c) of WIA requires that core services be provided, at a minimum, at one comprehensive physical center, the regulation requires that the applicable core services attributable to the partner's program be made available by each partner at that comprehensive center. To avoid duplication of services traditionally provided under the Wagner-Peyser Act, this requirement is limited to those applicable core services that are in addition to the basic labor exchange services traditionally provided in the local area under the Wagner-Peyser program. While a partner would not, for example, be required to duplicate an assessment provided under the Wagner-Peyser Act, the partner would be expected to be responsible for any needed assessment that includes additional elements specifically tailored to participants under the partner's program. However, the adult and dislocated worker program partners are required to make all of the core services available at the center.

Flexibility—The regulations also provide significant flexibility regarding how the core services are to be made available at the One-Stop center by allowing for services to be provided through appropriate technology at the center, through co-location of personnel, cross-training of staff, or through contractual or other arrangements between the partner and the service providers at the center.

2. *Proportional Responsibility:* The regulation also provides that the responsibility for the provision of and financing for applicable core services is to be proportionate to the use of services at the center by individuals attributable to the partners' programs. The regulation further provides that the individuals attributable to a partners' program may include individuals referred through the center and enrolled in the partner's program after the receipt of core services, individuals enrolled prior to the receipt of core services, individuals who meet the eligibility criteria for the partner's program and who receive an applicable core service, or individuals who meet an alternative definition described in the Memorandum of Understanding (MOU), described in subpart C. This ''proportionate responsibility'' provision is intended to provide an equitable principle for sharing responsibility among the partners. The regulation provides that the specific method for determining proportionate responsibility (for example, surveys) must be described in the MOU.

Additional Sites—The regulation provides that core services may be provided at sites in addition to the comprehensive center under the MOU. Therefore, it is not required that partners provide applicable core services exclusively at a One-Stop center. If an individual seeks core services at the One-Stop center rather than at the partner's site, they should be made available to him or her without referral to another location, but a partner is not required to route all of its participants through the comprehensive One-Stop center.

Access to Services—The regulation at § 662.260 provides that, in addition to the provision of core services, the One-

Stop partners must use the One-Stop system to provide access to the partners' other activities and programs. This access must be described in the MOU. This requirement is essential to ensuring a seamless, comprehensive workforce development system that identifies the service options available to individuals and takes the critical next step of facilitating access to these services.

3. *Cost Sharing:* The regulation at § 662.270 provides that the particular arrangements for funding the services provided through the One-Stop system and the operating costs of the One-Stop system must be described in the MOU. Each partner must contribute a fair share of the operating costs based on the use of the One-Stop delivery system by individuals attributable to the partner's program. This is an equitable principle and there are a number of methods that may be used for allocating costs among partners that are consistent with this principle and the OMB circulars. To promote efficiency and optimal performance, partner contributions for the administrative costs of the system may be re-evaluated annually through the memorandum of understanding process. The regulation identifies a number of methodologies, including cost pooling, indirect cost allocation, and activity based cost allocation plans, that may be used. The Department, in consultation with other affected Federal agencies, intends to issue guidance or technical assistance relating to cost allocation methods to assist in this area.

Allocation Process—The regulation at § 662.280 clarifies that the requirements of each partner's authorizing legislation continue to apply under the One-Stop system. Therefore, while the overall effect of linking One-Stop partners in the One-Stop system is to create universal access to core services, the resources of each partner may only be used to provide services that are authorized and provided under the partner's program to individuals who are eligible under the program.

As noted above, consistent with this principle, there are a variety of methods for allocating costs among programs. In sum, this regulation is intended to clarify that participation in the One-Stop delivery system is a requirement that is in addition to, rather than in lieu of, the other requirements applicable to the partner program under each authorizing law.

Subpart C—Memorandum of Understanding

Subpart C describes the operation of the local One-Stop system. Section 662.300 addresses the Memorandum of Understanding (MOU) that must be executed between the Local Board and the One-Stop partners. Section 662.310 states that the local areas may develop a single umbrella MOU covering all partners and the Local Board, or separate MOU's between partners and the Local Board. In many areas, the umbrella approach may be the preferred means to facilitate a comprehensive and equitable resolution of the operational issues relating to the One-Stop. The regulation also emphasizes that it is a legal obligation for the partners and the Local Board to engage in good faith negotiation and reach agreement on the MOU. The partners and the Local Boards may seek the assistance of the appropriate State agencies, the Governor, State Board or the appropriate parties in reaching agreement. The State agencies, the State Board, and the Governor may also consult with the appropriate Federal agencies to address impasse situations after exhausting other alternatives. If an impasse has not been resolved, parties that fail to execute an MOU may not be permitted to serve on the Local Board. In addition, if a Local Board has not executed an MOU with all required parties, the local area is not eligible for State incentive grants awarded for local coordination.

Subpart D—One-Stop Operator

This subpart addresses the role and selection of One-Stop operators. The operators are responsible for administering the One-Stop centers and their role may range from simply coordinating service providers in the center to being the primary provider of services at the center. The role is determined by the Local Board. In areas where there is more than one comprehensive One-Stop center, there may be separate operators for each center or one operator for multiple centers. The operator may be selected by the Local Board through a competitive process, or the Local Board may designate a consortium that includes three or more required One-Stop partners as an operator. The Local Board itself may serve as a One-Stop operator only with the consent of the chief elected official and the Governor. This subpart also addresses the ''grandfathering'' of existing One-Stop operators. The regulations provide some continuity for areas that have already established One-Stop systems while ensuring that fundamental features of the new One-Stop system are incorporated. A local area does not have to comply with the One-Stop operator selection procedures if the One-Stop delivery system, of which the operator is a part, existed before August 7, 1998 (the date of the WIA's enactment); if the One-Stop system includes all of the required One-Stop partners; and if an MOU is executed consistent with the requirements of the Act.

Part 663—Adult and Dislocated Worker Activities Under Title I of the Workforce Investment Act

Introduction

This part of the regulations describes requirements relating to the services that are available for adults and dislocated workers. Along with Wagner-Peyser labor exchange services, the required adult and dislocated worker services, described as core, intensive, and training services, form the backbone of the One-Stop delivery system. The WIA goal of universal access to core services is achieved through close integration of services provided by the Wagner-Peyser, WIA adult and dislocated worker partners and other partners in the One-Stop center and system. Intensive and training services are available to individuals who meet the eligibility requirements for the funding streams and who are determined to need these services to achieve employment, or in the case of employed individuals, to obtain or retain self-sufficient employment. Supportive services, to enable individuals to participate in these other activities, including needs-related payments for individuals in training, may also be provided.

These regulations also introduce the Individual Training Account (ITA), which is a key reform element of the Workforce Investment Act. Individuals are expected to take a proactive role in choosing the training services which meet their needs. They will be provided with quality information on providers of training and, armed with effective case management and an ITA as the payment mechanism, they will have the opportunity to choose the training provider that best meets their needs.

Subpart A—One-Stop System

1. *Role of the Adult and Dislocated Worker Program in the One-Stop System:* The regulation at § 663.100 provides that the One-Stop system is the basic delivery system for services to adults and dislocated workers. The concept of a single system that provides universal access to certain services to all individuals age 18 or older is a key tenet of the Workforce Investment Act. The regulation reflects the emphasis in WIA to consolidate and coordinate services. The grant recipient(s) for the adult and dislocated worker program is a required partner and is subject to § 662.210

regarding required partner responsibilities. Access to services through the One-Stop system ensures that individual needs are identified and, to the extent possible, met. The consolidation of and access to services will result in improved services for both adults and dislocated workers.

2. *Registration and Eligibility:* Sections 663.105 through 663.120 address registration and basic eligibility requirements. In response to concerns regarding the timing of eligibility determination for services in a One-Stop system, the Department has provided general guidance in the regulation at § 663.105 on when adults and dislocated workers must be registered. Sections 663.110 and 663.120 contain the basic eligibility criteria for adults and dislocated workers, respectively.

Individuals who are primarily seeking information and do not seek direct, one-on-one staff assistance, do not need to be registered. However, when an individual seeks more than minimal assistance from staff in taking the next steps toward self-sufficient employment, then eligibility must be determined. Registration is the point at which information that is used in performance measurement begins to be collected. In addition, equal employment opportunity data must be collected on individuals when any assessment or discretionary decision regarding a specific individual is made. Such assessments or decisions include: Decisions regarding service or program eligibility, either positive or negative; and decisions made on the part of any workforce investment system employee which lead to a targeting of services for the individual. The Department will issue further guidance regarding this data collection. Additional information needed to determine eligibility for other assistance available at the One-Stop site may also be determined at the same time. Program operators should determine the information that they need for cost allocation purposes and when they can most efficiently collect it. Electronic records systems allow information to be collected incrementally as higher levels of assistance are provided.

3. *Displaced Homemaker Eligibility:* In response to inquiries regarding assistance to displaced homemakers, the regulation at § 663.120 clarifies that a displaced homemaker who has been dependent on the income of another family member but is no longer supported by that income, is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment, may receive assistance with funds available to Local Boards for services to dislocated workers.

4. *Title I Funds:* Section 663.145 clarifies how title I adult and dislocated worker funds are used to contribute to the provision of core services, and to provide intensive and training services through the One-Stop delivery system. All three types of services must be provided, but the Local Boards determine the mix of the three services.

5. *Sequence of Services:* WIA provides for three levels of services: Core, intensive, and training, with service at one level being a prerequisite to moving to the next level. There was a great deal of concern expressed about how this tiered approach would be implemented. Many were particularly concerned that the Department might require a ''failed'' job search or a minimum time period in one level of service before moving on to the next level. The regulations establish the concept of a tiered approach but allow significant flexibility at the local level. The Department, in response to the comments received, did not establish a minimum number of ''failed'' job applications or a minimum time period but, instead, allows localities to establish gateway activities that lead from participation in core to intensive and training services. Any core service, such as an initial assessment or job search and placement assistance, could be the gateway activity. In intensive services, the gateway activity could be the development of an individual employment plan, individual counseling and career planning or another intensive service. Key to these gateway activities is the determination, made at the local level, that intensive or training services are required for the participant to achieve the goal of obtaining or retaining self-sufficient employment. The three levels of services are discussed separately in the regulations.

6. *Core Services:* The regulations at §§ 663.150 to 663.165 discuss the core services. All of the core services that are listed in the Act must be made available in each local area through the One-Stop system. Followup services must be available for a minimum of 12 months after employment begins, to registered participants who are placed in unsubsidized employment. Among the core services available is information on targeted assistance available through the One-Stop system for specific groups of workers, such as Migrant and Seasonal Farm Workers, and veterans.

Core services also include assistance in establishing eligibility for the Welfare-to-Work program and programs of financial aid for training and education programs. The specific form of this assistance is determined at the local level based on the participant's needs and in coordination with the other partner programs. This assistance may include: referrals to specific agencies; information relating to, or provision of, required applications or other forms; or specific on-site assistance.

Another core service is the provision of information relating to the availability of supportive services, including child care and transportation, available in the local area, and referral to such services as appropriate. The Department encourages Local Boards to establish strong linkages with a variety of supportive service programs, including Food Stamps, Medicaid programs, and CHIP. Such programs provide key supports for low-income working families and families making the transition from welfare to self-sufficiency.

The Department also encourages Local Boards to establish strong linkages to child support agencies and organizations serving fathers. WIA services can help raise the employment and earnings of non-custodial fathers and fathers living with their children so that they can better support their children. Child support payments help low income single parents stabilize and raise their income. At the same time, it is important for One-Stop programs to be aware of the child support requirements on non-custodial parents who may receive services.

Subpart B—Intensive Services

1. *Intensive Services for Adults and Dislocated Workers:* The regulation at § 663.200 discusses intensive services. The regulation provides that intensive services beyond those listed in the Act may also be provided. Out-of-area job search expenses, relocation expenses, internships, and work experience are specifically mentioned to clarify that they are among the additional intensive services that may be provided. Intensive services are intended to identify obstacles to employment through a comprehensive assessment or individual employment plan in order to determine specific services needed, such as counseling and career planning, referrals to community services, and, if appropriate, referrals to training.

2. *Participation in Intensive Services:* Section 663.220 explains that intensive services are provided to unemployed adults and dislocated workers who are unable to obtain employment through core services and require these services to obtain or retain employment, and employed workers who need services to obtain or retain employment that leads

to self-sufficiency. The regulations at §§ 663.240 through 663.250 specify that an individual must receive at least one intensive service, such as the development of an individual employment plan with a case manager or individual counseling and career planning, before the individual may receive training services and that there is no Federally required minimum time for participation in intensive services. Each person in intensive services should have a case management file, either hard copy, electronic or both. Section 663.240 explains that the case file must contain a determination of need for training services, as identified through the intensive service received.

3. *Self-sufficiency:* This regulation, at § 663.230, discusses how ''self-sufficiency'' should be determined. WIA requires a determination that employed adults and dislocated workers need intensive or training services to obtain or retain employment that allows for self-sufficiency as a condition for providing those services. Recognizing that there are different local conditions that should be considered in this determination, the regulation provides maximum flexibility, requiring only that self-sufficiency mean employment that pays at least the lower living standard income level. State Boards or Local Boards must set the criteria for determining whether employment leads to self-sufficiency. Such factors as family size and local economic conditions may be included in the criteria. It may often occur that dislocated workers require a wage higher than the lower living standard income level to maintain self-sufficiency. Therefore, the Rule allows self-sufficiency for a dislocated worker to be defined in relation to a percentage of the lay-off wage.

Subpart C—Training Services

1. *Training Services:* Training services are discussed at §§ 663.300 and 663.320. Training services are designed to equip individuals to enter the workforce and retain employment. Under JTPA, a dislocated worker participating in training under title III of JTPA is deemed to be in training with the approval of the State Unemployment Compensation Agency. With such approval, unemployment compensation cannot be denied to the individual solely on the basis that the individual is not available for work because he or she is in training. Although there is no comparable provision in WIA, this JTPA provision will remain in effect during the transition period under the Secretary's authority to guide that transition from JTPA to WIA. The Department will seek an amendment adding similar language to WIA which would deem all adults participating in training under title I of WIA to be in approved training for the purposes of unemployment compensation qualification.

2. *Determining the Need for Training:* The regulations at § 663.310 provide that the One-Stop operator or partner determines the need for training based on an individual (1) meeting the eligibility requirements for intensive services; (2) being unable to obtain or retain employment through such services; and (3) being determined after an interview, evaluation or assessment to be in need of training. Section 663.310 requires that, to receive training, an individual must select a program of services directly linked to occupations in demand in the area, based on information provided by the One-Stop operator or partner. If individuals are willing to relocate, they may receive training in occupations in demand in another area.

3. *Requirements When Other Grant Assistance is Available to Participants.* Section 663.320 implements the requirements of WIA section 134(d)(4)(B), which limits the use of WIA funds for training services to instances when there is no or inadequate grant assistance from other sources available to pay for those costs. The statute specifically requires that funds not be used to pay for the costs of training when Pell Grant funds or grant assistance from other sources are available to pay the costs. This section is intended to give effect to this WIA requirement and still give effect to title IV of the Higher Education Act (HEA) as amended (20 U.S.C. 1087uu), which prohibits taking into account either a Pell Grant or other Federal student financial assistance when determining an individual's eligibility for, or the amount of, any other Federal funding assistance program.

Section 134(d)(4)(B) of WIA requires the coordination of training costs with funds available under other Federal programs. To avoid duplicate payment of costs when an individual is eligible for both WIA and other assistance, including a Pell Grant, § 663.320(b) requires that program operators and training providers coordinate by entering into arrangements with the entities administering the alternate sources of funds, including eligible providers administering Pell Grants. These entities should consider all available sources of funds, excluding loans, in determining an individual's overall need for WIA funds. The exact mix of funds should be determined based on the availability of funding for either training costs or supportive services, with the goal of ensuring that the costs of the training program the participant selects are fully paid and that necessary supportive services are available so that the training can be completed successfully. This determination should focus on the needs of the participant; simply reducing the amount of WIA funds by the amount of Pell Grant funds is not permitted. Participation in a training program funded under WIA may not be conditioned on applying for or using a loan to help finance training costs.

With such coordination and arrangements, the WIA counselor is likely to know the amount of WIA funds available to the WIA participant when calculating the amount of financial assistance needed for the participant to complete the training program successfully. The WIA counselor needs to work with the WIA participant to calculate the total funding resources available as well as to assess the full ''education and education related costs'' (training and supportive services costs) incurred if the participant is to complete the chosen program. This also ensures both that duplicate payments of training costs are not made and that the amount of WIA funded training is not reduced by the amount of Federal student financial assistance in violation of 20 U.S.C. 1087uu.

It is important to note that the Pell Grant is not school-based; rather, it is a portable grant for which preliminary eligibility can, and should, be determined before the participant enrolls in a particular school or training program. The application for determining eligibility and ultimately the amount of the grant, should be readily available at all One-Stop centers for assistance in the completion of these ''gateway'' financial aid applications.

Section 663.320(c) implements the requirements of WIA section 134(d)(4)(B)(ii). This section permits a WIA participant to enroll in a training program with WIA funds while an application for Pell Grant funds is pending, but requires that the local workforce investment area be reimbursed for the amount of the Pell Grant used for training if the application is approved. Since Pell Grants are intended to provide for both tuition and other education-related costs, the Rule also clarifies that only the portion provided for tuition is subject to reimbursement.

In the limited cases where contracts are used rather than ITA's, the contracts negotiated by the One-Stop center must prohibit training institutions or

organizations from holding the student liable for outstanding charges. Otherwise, the performance agreements would be undercut because the incentive for the institution or organization to perform would be removed. Also, the practice of withholding Pell Grants from students is prohibited by the U.S. Department of Education.

Subpart D—Individual Training Accounts

1. *Definition of an Individual Training Account:* Information regarding Individual Training Accounts (ITA) is contained in §§ 663.400 through 663.430. A key reform tenet of the Workforce Investment Act is that adults and dislocated workers who have been determined to need training, may access training with an Individual Training Account. The regulation at § 663.410 provides a definition for an ITA that seeks to provide maximum flexibility to State and local program operators in managing ITA's. These regulations do not establish the procedures for making payments, restrictions on the duration or amounts of the ITA, or policies regarding exceptions to the limits, but provide that authority to the State or Local Boards. However, this authority to restrict the duration of ITA's or restrict funding amounts should not be used to establish limits that arbitrarily exclude eligible providers.

2. *Exceptions to ITA's:* The Act at section 134(d)(4)(G)(ii) and § 663.430 of the regulations provide that, under certain limited circumstances, contracts for training rather than ITA's may be used. Specifically, on-the-job training contracts with employers and customized training contracts are authorized. Contracts may also be used when there is an insufficient number of eligible providers in a local area. This exception applies primarily to rural areas. The exceptions to ITA's are to be used infrequently. The Act reforms the local service delivery system by eliminating the current practice of assigning participants to contracted training services and instead establishing a system that maximizes customer choice in the selection of training providers. When the Local Board determines there are an insufficient number of eligible providers in the local area to accomplish the purposes of a system of ITA's, and intends to use contracts for services, there must be at least a 30 day public comment period for interested providers.

Contracts for Special Populations—Contracts for training are also authorized when the Local Board determines that there are special populations that face multiple barriers to employment, as identified in § 663.430(b), and that there is a training services program of demonstrated effectiveness offered by an eligible provider. Section 663.430(a)(3) explains that an eligible provider in this case is a community based organization (CBO) or other private organization. The Department has received many suggestions about this exception and the extent to which it may be used. This exception is intended to meet special needs and should be used infrequently. Those training providers operating under the ITA exceptions still must qualify as eligible providers, as required at § 663.505. The Department believes that effective eligible training providers, including CBO's and other training providers, can and will compete for individual training accounts and, that providers should view the use of ITA's as an opportunity to expand their customer base.

Criteria for ''Demonstrated Effectiveness''—The regulation at § 663.430(a)(3) provides that when the exception for special populations is used, the Local Board must apply criteria it develops to determine ''demonstrated effectiveness,'' particularly as it applies to the special participant population it proposes to serve. This determination is in addition to meeting the requirements for qualifying as an eligible training provider. The provisions in the regulation are illustrative and Local Boards should develop specific criteria applicable to their local areas.

Subpart E—Eligible Training Providers

1. Subpart E describes the methods by which organizations qualify as eligible providers of training services under WIA. It also describes the roles and responsibilities of Local Boards and the State in managing this process. Although no single entity has full responsibility for the entire process, the State must play a leadership role in ensuring the success of the eligible provider system. The Governor establishes minimum performance levels for initial determination of non-Higher Education Act/registered apprenticeship providers and for all subsequent eligibility determinations. The Local Board may establish additional local performance levels for subsequent eligibility determinations. The eligible provider process requires a collaborative effort among the State, Local Boards, and other partners. The regulations attempt to amplify and clarify the intent of the Act, by linking statutory language on eligible providers in WIA section 122 with section 134 provisions covering Individual Training Accounts. In § 663.505, the regulations clarify that all training providers, including those operating under the ITA exceptions, must qualify as eligible providers, except for those engaged in on-the-job and customized training (for which the Governor should establish qualifying procedures as discussed in § 663.595). Finally, in order to ensure the strong relationship between the eligible provider process and program performance, the regulation at § 663.530 establishes a maximum eighteen month period for an organization's initial determination as an eligible provider.

The Department heard concern that some traditional providers of training under previous workforce programs, such as community-based organizations, would face difficulties in participating in this system. The regulations clarify that such organizations have the opportunity to deliver training funded under WIA, provided they deliver services that customers value and meet training performance requirements. It is important that States provide access to these organizations in order to maximize customer choice. States should provide access to a broad and diverse set of providers, including CBO's, while maintaining the quality and integrity of training services.

Subpart F—Priority and Special Populations

1. *Priority Under Limited Adult Funding:* This subpart contains requirements related to the statutorily-required priority for the use of adult funds when funds are limited. WIA section 134(d)(4)(E) states that in the event that funds allocated to a local area for adult employment and training activities are limited, priority shall be given to recipients of public assistance and other low-income individuals for intensive services and training services. The appropriate Local Board and the Governor must direct the One-Stop operators in the local area with regard to making determinations related to such priority. The Department assumes that adult funding is generally limited because there are not enough adult funds available to provide services to all of the adults who could benefit from such services. However, the Department also recognizes that conditions are different from one area to another and funds might not be limited in all areas. Because of this, the regulation requires that all Local Boards must consider the availability of funds in their area. In making this determination, the availability of other Federal funding, such as TANF and Welfare-to-Work

funds, should be taken into consideration. Unless the Local Board determines that funds are not limited in the local area, the priority requirement will be in effect. States and Local Boards must work together to establish the criteria that must be used in making this determination. States and Local Boards also may administer their priority for adult recipients of public assistance and other low income adults so as not to preclude providing intensive and training services to other individuals.

A substantial number of parties expressed views on the priority issue. Many believed that the Department should not write any regulations that would, in effect, establish a nationwide priority. Some believed that the Department should not write any regulations at all on this section of the statute. However, the Department believes that the interpretation of this requirement is of such importance that there must be regulations. This section reiterates the statutory language that provides States and Local Boards with the authority to determine the criteria to be applied when making the determination that there are sufficient funds available so that the priority is not in effect. Section 663.610 clarifies that the statutory priority only applies to adult funds for intensive and training services, and not to dislocated worker funds.

2. *Welfare-to-Work and Temporary Assistance to Needy Families as Part of One-Stop:* At § 663.620, the regulation discusses the relationship of the Welfare-to-Work program and the Temporary Assistance to Needy Families (TANF) program to the One-Stop delivery system. Welfare-to-Work is a required partner to which the One-Stop partner regulations apply. The TANF agency is specifically suggested as an additional partner. Both programs can benefit from close cooperation with the One-Stop delivery system because their respective participants will have access to a much broader range of services to promote employment retention and self-sufficiency.

Subpart G—On-the-Job Training and Customized Training

1. Sections 663.700 through 663.720 are the regulatory provisions for conducting on-the-job (OJT) and customized training activities. They include specific information regarding general, contract, and employer payment requirements. The Department received input advocating OJT regulations which do not restrict the duration of OJT and which permit eligible employed workers to also receive this training. Unlike JTPA, OJT is not limited to six months. However, as specified in WIA section 101(31)(C), it is limited in duration as appropriate for the occupation being trained for. Section 663.705 establishes requirements that permit OJT contracts for employed workers.

Some parties called for minimal regulations in this area; however, there were a few who suggested the need for information regarding documentation requirements to avoid audit exceptions. Section 663.710 provides that employers are not required to document the extraordinary costs associated with providing OJT, and no further documentation requirements are established. Instead, program operators should put emphasis on the development and/or selection of OJT assignments that meet the identified needs of the participants.

Subpart H—Supportive Services

1. *Flexibility in the Provision of Supportive Services:* The regulations in subpart H define the scope and purpose of supportive services and the requirements governing their disbursement. A fundamental principle of WIA is to provide local areas with the authority to make policy and administrative decisions as well as the flexibility to tailor the workforce investment system to meet the needs of the local community. To ensure this flexibility, the regulations afford local areas the discretion to provide supportive services as they deem appropriate with limitations only in the areas defined in the Act. Local Boards are required to develop policies and procedures addressing coordination with other entities to ensure non-duplication of resources and services, as well as any limits on the amount and duration of such services. Attention should be given to developing policies and procedures that ensure that the supportive services provided are not available through other agencies and that they are necessary for the individual to participate in title I activities.

2. *Needs-Related Payments:* There were a number of issues regarding the eligibility requirements for dislocated workers to receive needs-related payments that came to our attention, including the concern that training enrollment requirements restrict the numbers of individuals eligible to receive this income support which they need to participate in training. Studies show that early entry into training for dislocated workers who require it is a key factor in reducing the period of unemployment during the adjustment process. Early intervention strategies and policies are best implemented through quality rapid response assistance which includes comprehensive core services, and the provision of other reemployment assistance, including intensive and training services, as soon as the need can be identified, preferably before layoff. The statute authorizes all levels of assistance under title I of WIA to many workers six months (180 days) before layoff, or at least as soon as a layoff notice is received. Providing these workers with access to quality information regarding all adjustment assistance available in the community, including any deadlines that must be met, is critical for workers to make intelligent reemployment choices. Thus, many of the concerns raised can be resolved through the use of early intervention strategies. The Department has decided to issue only limited regulations on needs-related payments eligibility at § 663.815 through § 663.840.

Part 664—Youth Activities Under Title I

Introduction

The youth regulations attempt to reflect the intent of the legislation by moving away from one-time, short-term interventions and moving to a systematic approach that offers youth a broad range of coordinated services. Such offerings include opportunities for assistance in both academic and occupational learning; developing leadership skills; and preparing for further education, additional training, and eventual employment. Rather than supporting separate, categorical programs, the youth regulations are written to facilitate the provision of a menu of varied services that may be provided in combination or alone at different times during a youth's development.

Legislation creating the youth council, the local entity responsible for recommending and coordinating youth policies and programs, intends that the youth council be a catalyst for such broad change. The regulations support that legislative intent.

Flexibility for local program operators in conducting youth programs is key to the legislation and these regulations. The Department encourages local decision making in terms of policy, youth program design within the statutory framework, and determining appropriate program offerings for each individual youth. It is the Department's expectation that these offerings will provide needed guidance for youth that is balanced with appropriate

consideration of each youth's involvement in his or her training and educational plan. Further, the regulations support strong connections between youth program activities and the One-Stop service delivery system, so that youth learn early in their development how to access the services of the One-Stop system and continue to use those services throughout their working lives.

Subpart A—Youth Councils

1. This subpart explains the purpose of youth councils. The youth council is a new feature of the workforce investment system that helps develop youth employment and training policy, brings a youth development perspective to the establishment of such policy, establishes linkages with other local youth services organizations, and takes into account a range of issues that can have an impact on the success of youth in the labor market. Working with the youth council, the Local Board has responsibility for oversight of youth programs. It may be advantageous for Local Boards to delegate responsibility for oversight of youth programs to youth councils which have expertise in youth issues, as is permitted by § 664.110.

Subpart B—Eligibility for Youth Services

1. Definition of Sixth Eligibility Barrier: Under section 101(13)(C)(vi) of the Act, a low income youth is eligible for services if he or she ''requires additional assistance to complete an educational program, or to secure and hold employment.'' The regulation at § 664.210 envisions that Local Boards will define this term, however, if State policy is set regarding this provision, the policy must be described in the State Plan.

2. Registering Youth Participants: Section 664.215 provides that all youth participants be registered by collecting information for supporting eligibility determinations, as well as EEO data. The EEO data must be collected on individuals when any assessment or discretionary decision regarding an individual is made. Such assessments include decisions regarding service or program eligibility, either positive or negative, and decisions made on the part of any workforce investment system employee which lead to a targeting of services for the individual. The Department will issue further guidance regarding this data collection requirement.

3. Non-Income Eligible Youth: Section 129(c)(5) of the Act provides that up to five percent of youth participants served in a local area may be individuals who do not meet income criteria for eligible youth, provided that they meet one or more of the criteria specified in section 129(c)(5) of the Act and the regulations at § 664.220. Local Boards may define the term ''serious barriers to employment'' and describe it in the Local Plan.

4. Eligibility under the National School Lunch Program: Eligibility for free school lunches is not a substitute for income eligibility under the Act. The Department received suggestions that program operators be allowed to use eligibility for free lunch as a substitute for determining eligibility under the Act, and encouraging the Department to seek a technical amendment that would include such a provision in the legislation. The Department recognizes the importance of this issue, yet lacks statutory authority to change the Act's income eligibility requirements.

5. Eligibility of Youth with Disabilities: Section 664.250 provides that a disabled individual whose family income exceeds maximum income levels under the Act may qualify for services if the individual's own income meets the income criteria established in WIA section 101(25)(F), or the eligibility criteria for cash payments under any Federal, State or Local public assistance program. (WIA section 101(25)(B).)

Subpart C—Out of School Youth

1. Defining Out-of-School Youth: Sections 664.300, 664.310, and 664.320 address issues related to out-of-school youth. Section 101(33) of the Act defines ''out-of-school youth'' as: eligible youth who are school dropouts or who have received a secondary school diploma or its equivalent, but are basic skills deficient, unemployed, or underemployed. Youth enrolled in alternative schools are not school dropouts. The Department received a number of requests that it seek a technical amendment that would allow youth attending alternative schools to be included in the definition of ''dropout,'' noting that this would permit Local Boards to provide services to more youth in alternative educational environments and to design programs that take advantage of local resources and best meet the needs of local youth. While recognizing the importance of local flexibility and of serving youth in alternative school settings, the Department lacks statutory authority to change definitions established under the Act. Section 664.310 of the regulations clarifies this issue.

2. Funds for Summer Activities for Out-of-School Youth: The Department received a number of inquiries asking if summer activities are exempt from the requirement that 30 percent of youth funds be spent on services for out-of-school youth. Transition guidance will address how the 30% requirement applies to the Program Year 1999 JTPA summer funds. Section 664.320 clarifies that there is no exemption from this requirement for summer activities. There is no separate summer program under the Act. A single allocation of youth funds is available to local areas for year-round and summer activities. Thirty percent of the total youth allocation must be spent on services for out-of-school youth. This 30 percent, like the remaining 70 percent, may or may not be proportional between summer and year-round activities, as determined by the Local Board in consultation with the chief elected official.

Subpart D—Youth Program Design, Elements, and Parameters

1. Program Design: Features of the youth program design are outlined in section 129(c) of the Act. While there are three program design categories and ten program elements are required, there is individual program design flexibility and flexibility in determining the definition, scope, and characteristics of the elements.

Program Design Categories—Under section 129(c)(1), three categories provide the framework for youth program design. They are: (1) An objective assessment of each participant; (2) individual service strategies; and (3) services that prepare youth for postsecondary educational opportunities, link academic and occupational learning, prepare youth for employment, and provide connections to intermediary organizations linked to the job market and employers.

Linkages to Entities—Youth councils and programs are required to establish linkages to entities that will foster the participation of eligible youth. Suggested linkages are included in § 664.400(c).

Information and Referrals—Section 129(c)(3) of the Act requires that Local Boards ensure that eligible youth receive information and referrals, including information on the full array of appropriate services available to them and referrals to appropriate training and educational programs. Youth program providers must ensure that eligible applicants who do not meet the enrollment requirements of their program or who cannot be served by their program are referred for additional assessment and program placement. This language was included in § 664.400(d) of the regulations to emphasize the importance of referrals as

a part of overall youth program design. To further promote the concept of seamless One-Stop service delivery, One-Stop operators are encouraged to send those youth assessments that are completed at the One-Stop center to other training and educational programs to which the youth is referred.

2. Program elements: Section 129(c)(2) of the Act lists 10 program elements that must be generally available to youth through local programs. The Department received requests for clarification that not all of the 10 youth program elements must be provided to every youth participant, and this interpretation is included in § 664.410(b). Local program operators must determine what program elements will be provided to each youth participant based on the participant's objective assessment and service strategy; however, it is envisioned that each youth will participate in more than one of the ten program elements required as part of any local youth program, and all youth must receive follow-up services. For example, even if it is determined appropriate that a youth participate in only summer employment activities, he or she would still receive at least 12 months of followup services. Followup service requirements are fully described in § 664.450. Sections 664.420 through 664.470 further define and discuss five program elements: leadership development, positive social behaviors, supportive services, followup services, and work experiences.

Leadership Development—The Act states that youth programs must provide leadership development opportunities, and gives the following examples of such activities: community service and peer-centered activities encouraging responsibility and other positive social behaviors during non-school hours. Some additional examples of leadership development activities are outlined in § 664.420 which elaborates on the definition of leadership development opportunities. The development of leadership abilities might address team work, decision making, personal responsibility, and citizenship training, as well positive social behavior training in areas such as positive attitudinal development, self esteem building, issues of cultural diversity, and other skills and attributes that would help youth to lead effectively, responsibly, and by example.

Supportive Services—The Act states that youth programs must provide supportive services. Section 101(46) of the Act defines supportive services to include services such as transportation, child care, dependent care, housing, and needs-related payments, that are necessary to participate in activities authorized under the Act. Section 664.440 elaborates on the definition of supportive services as it applies to youth. Such services may include: linkages to community services; referrals to medical services; and assistance with work attire and work-related tool costs, including such items as eye glasses and protective eye gear.

Followup Services—The Act states that followup services will be provided for not less than 12 months after the completion of participation, as appropriate. Section 664.450(b) clarifies that all youth participants must receive some form of followup services. Such services must be for a minimum of 12 months. Followup services for youth who participate in only summer employment activities may, however, be less intensive than for those youth who participate in other types of activities. Program operators are encouraged to consider the intensity of the services provided and the needs of the individual youth in determining the appropriate level of followup services. This section also provides that followup may include leadership development or supportive service activities, as well as other allowable activities, and provides additional examples of permissible followup services.

Evaluation studies such as Abt Associates' Final Report on the National JTPA Study, have shown disappointing results for short-term job training programs for youth. Meanwhile, programs such as STRIVE and the Children's Village have shown much success with longer-term followup strategies. A 1993 study by MDRC showed that the Center for Employment Training, which features close ties to the private sector and a strong job placement component with followup with employers, increased the earnings of enrollees by $3,000 a year over a control group during the last two years of a four-year evaluation.

Work Experiences—Sections 664.460 and 664.470 address work experiences for youth. Work experiences are planned, structured learning experiences that take place in a workplace for a limited period of time. No specific time period is specified. As provided in section 129(c)(2)(D) of the Act, work experiences may be paid or unpaid, as appropriate. Section 664.460 states that work experiences may be in the private for-profit sector, the nonprofit sector, or the public sector, and gives examples of the types of activities that work experiences may include, such as On-the-Job Training (OJT). While OJT is likely not an appropriate activity for most youth under age 18, it may be used as a service strategy for such youth based on the needs identified in an objective assessment of an individual youth participant. Section 664.470 provides that youth funds may be used to pay the wages of youth in work experience. Youth funds may be used to pay the wages of youth in work experiences, including in the private, for-profit sector, under conditions designed to protect youth and incumbent workers when the purpose of the work experiences is to provide youth with opportunities for career exploration and skill development and not to benefit the employer. If an unpaid work experience creates an employer/employee relationship, federal wage standards may apply. This relationship is determined under the Fair Labor Standards Act.

Subpart E—Concurrent Enrollment

1. *Concurrent Enrollment in Youth and Adult Programs:* Under the Act, an eligible youth is an individual 14 through 21 years of age. Adults are defined in the Act as individuals age 18 and older. The Department received suggestions that local program operators be allowed to decide whether youth or adult services are appropriate for individuals aged 18 through 21 based on individual participant assessments and service strategies. The Department encourages local flexibility in serving both youth and adult participants, and thus included this clarification in the regulations. Section 664.500(b) clarifies that eligible youth who are 18 through 21 years old may participate in youth and adult programs concurrently, as appropriate for the individual. Such individuals must meet the eligibility requirements under the applicable youth or adult criteria for the services received. Local program operators must identify and track the funding streams for services provided to individuals who participate in youth and adult programs concurrently, ensuring non-duplication of services.

2. *Individual Training Accounts for Youth:* Section 664.510 states that ITA's are not an authorized use of youth funds. The ITA is the currency of a market-based system that enables adults to select the service providers most suited to their needs based on information about the past performance of such providers. Under the Act, ITA's are not authorized for youth below age 18. Providers of youth services are competitively selected based on predetermined criteria, the judgment of Local Boards, and recommendations of youth councils about the providers' ability to meet the needs of youth

participants. Youth aged 18 through 21 can access ITA's under the adult or dislocated worker program, if appropriate.

Subpart F—Summer Employment Opportunities

1. *Summer Employment Activities:* This subpart provides clarification about summer youth employment. Although all Local Boards must offer summer employment opportunities for eligible youth as one of the ten required program elements listed in WIA section 129(c)(2) and § 664.410, the proportion of youth funds used for summer employment is determined by the Local Board in consultation with the chief elected official. Section 664.600 elaborates on the activities that must be included in all summer employment opportunities, including direct linkages to academic and occupational learning, as well as followup services for at least 12 months. Numerous inquiries were received about whether the Act would allow cities and counties to continue to operate their summer activities. Section 664.610 provides that this practice is still allowed, and clarifies that if summer employment opportunities are provided by entities other than the grant recipient/fiscal agent, the providers must be selected by awarding a grant or contract on a competitive basis based on recommendations of the youth council and on criteria contained in the State plan.

2. *Application of Performance Indicators:* In terms of performance measurement, the Department received requests for clarification on whether all of the core indicators listed in the Act apply to the summer program element as well as to youth activities that are longer in duration. It is important to note that the core indicators specified in section 136 of the Act apply to all youth program activities. This is consistent with the intent of the Act to move from a focus on separate, categorical programs to a more systematic approach to workforce investment and serving the needs of youth. Summer employment opportunities then, are to be viewed as one element among many available to youth as a part of a menu of activities offered by the Local Board. Section 664.620 indicates that summer activities, as part of the overall youth program, are required to meet the same core indicators of performance as the other youth activities.

Subpart G—One-Stop Career Center Services to Youth

1. *The Connection between the Title I Youth Program and the One-Stop Delivery System:* This subpart explains that the chief elected official (as the local grant recipient for the youth program), as a required One-Stop partner, is subject to the One-Stop provisions related to such partners described in part 662 of the regulations and is responsible for connecting the youth program and its activities to the One-Stop system. In addition to the provisions of part 662, connections between the youth program and the One-Stop system may include those that facilitate:

- The coordination of youth activities;
- Connections to the job market and employers;
- Access for eligible youth to information and services; and
- Other activities designed to achieve the purposes of the youth program.

The Department received requests for clarification on connecting youth program activities to the One-Stop delivery system; however, some parties felt that the youth program, as a One-Stop partner, should not be made to conform to the same One-Stop partner requirements as other partners. The Rule attempts to clarify the role of the youth program in the One-Stop center through a cross-reference to the One-Stop regulations found in 20 CFR, part 662.

2. *Universal Access to One-Stop Centers for Youth under 18:* Under section 134(d)(2) of the Act, adults have access to core services in One-Stop centers without regard to eligibility. Adults are defined under the Act as persons aged 18 and above. Section 664.710 of the regulations clarifies that local area youth, including youth under age 18 who are not eligible under the title I youth program, may receive services through the One-Stop centers; however, services for such youth must be funded from sources that do not restrict eligibility for services, such as Wagner-Peyser. The Department believes that the intent of the Act is to introduce youth, particularly out-of-school youth, to the services of the One-Stop system early in their development and to encourage the use of the One-Stop system as an entry point to obtaining education, training, and job search services.

Subpart H—Youth Opportunity Grant Programs

This subpart explains that competitive procedures for awarding Youth Opportunity Grants will be established by the Secretary. It also restates statutory language regarding the eligibility of Local Boards and other entities in high poverty areas to apply for Youth Opportunity Grants. Provisions of the Act regarding eligibility for services under Youth Opportunity Grants and the process for establishing performance measures are clarified at §§ 664.800 to 664.830. The Department views these grants as a distinct opportunity to provide a variety of needed services to youth in high poverty areas, building on the current successful activities and innovations already at work in many communities.

Part 665—Statewide Activities Under Title I of the Workforce Investment Act

Introduction

This part addresses the funds reserved at the State level for workforce investment activities under sections 128(a) and 133(2) of WIA.

Subpart A—General Description

This subpart provides a general description of Statewide activities conducted with up to 15 percent reserved from youth, adult and dislocated worker funding streams (''15 percent funds''), and up to an additional 25 percent of dislocated worker funds reserved for Statewide activities from annual allotments to the State.

1. Section 665.110(b) explains that the 15 percent reserved funds may be pooled and expended on workforce investment activities without regard to the source of the funding. For example, funds reserved from the adult funding stream may be used to carry out Statewide youth activities and vice versa. The Department believes that the use of these funds can provide critical leadership in the development and continuous improvement of a comprehensive workforce investment system for each State and, as a result, create a national system to which job seekers and workers can look for expert assistance, and employers can look for a qualified workforce.

Subpart B—Required and Allowable Statewide Workforce Investment Activities

This subpart discusses required and optional activities conducted with funds reserved from the three title I funding streams (youth, adults, and dislocated workers).

1. *Required Activities:* Section 665.200 identifies the eight activities which each State is required to carry out with its reserved funds from the three funding streams. The Governor must reserve funding for these activities, but has discretion to determine the amount reserved, up to the maximum 15 percent of each funding stream. One use of these funds is administration, subject to the five percent administrative cost

limitation at 20 CFR 667.210(a)(1). This section clarifies that while there is no specific amount for each of the seven of the eight required activities to be carried out with the 15 percent funds, it is expected that the State will expend a sufficient amount to ensure effective implementation of those activities. The eighth required activity, rapid response, is discussed in subpart C.

2. *Optional Activities:* Section 665.210 also identifies activities which each State is allowed to carry out with the 15 percent funds. For the first time, States have the discretion to conduct research and demonstration projects, and incumbent worker projects, including the establishment and implementation of an employer loan program. Section 665.220 makes clear that employed (incumbent) workers served under projects funded with these reserve funds are not required to meet the requirements that training is needed to lead to a self-sufficient wage applicable to employed adult or dislocated workers served with local formula funds.

Subpart C—Rapid Response Activities

This subpart addresses the use of funds that must be reserved (up to 25 percent of dislocated worker funds allotted to States under section 132(b)(2)(B) of WIA) to provide rapid response assistance.

1. Section 665.300 describes what are rapid response activities and who is responsible for providing them. Rapid response assistance commences at the site of dislocation as soon as a State has received a WARN notice, a public announcement or other information that a mass dislocation or plant closure is scheduled to take place. The Department believes that this early intervention feature for dislocated workers, if provided in a comprehensive and systematic manner through collaboration between the State and Local Boards, One-Stop partners and other applicable entities, is critical to enabling workers to minimize the duration of unemployment following layoff. The Department strongly urges States and Local Boards to implement processes that allow for core services to be an integral part of rapid response assistance, preferably on-site, if the size of the dislocation or other factors warrant it. Further, WIA defines a dislocated worker at section 101(9) in a way that permits formula funds to be used for intensive and training services for workers: (1) As soon as they have layoff notices; or (2) six months (180 days) prior to layoff if employed at a facility that has made a general announcement that it will close within 180 days.

The Department believes that this is a critical period for workers, States, Local Boards, One-Stop operators and partners to begin to make important decisions. One important decision is whether there are sufficient formula funds in the State (at the State or local levels) to adequately serve the workers being dislocated, or whether national emergency grant funds must be requested in a timely manner so that all services are available to the workers when they need them.

2. In response to numerous concerns regarding whether rapid response funds may be used beyond those types of required rapid response assistance described in the Act and § 665.310, the Department has elaborated on the authorized rapid response activities in the regulation at § 665.320. These additional activities were recommended by experts consulted on this topic.

3. Section 665.330 addresses the linkage of rapid response assistance and WIA title I assistance to NAFTA-Transitional Adjustment Assistance (NAFTA–TAA). This linkage is an important feature of the One-Stop delivery system, and a requirement under NAFTA–TAA.

Part 666—Performance Accountability Under Title I of the Workforce Investment Act

Introduction

This part presents the performance accountability requirements under title I of the Act. This part of the regulations primarily summarizes the statutory language in the Act and clarifies a few key areas based on input the Department has received. WIA's purpose is to provide workforce investment activities that improve the quality of the workforce. The Department is strongly committed to a systemwide continuous improvement approach, grounded upon proven quality principles and practices. The regulations identify some of the major issues where further guidance will be provided.

Subpart A—State Measures of Performance

1. *Indicators:* Section 666.100 identifies the 15 core indicators of performance and the two customer satisfaction indicators that States are required to address in title I grant applications. The 15 core indicators represent the four core indicators that will be applied separately for the three population categories (adult, dislocated workers and eligible youth age 19 through 21) for a total of 12 indicators and the three youth indicators. There is one customer satisfaction indicator for participants and one for employers. Section 666.110 clarifies that Governors may develop additional performance indicators to be negotiated with Local Boards and that these additional indicators must be included in the State Plan.

2. *Definitions:* Section 666.100(b) also explains that the Departments of Labor and Education will issue more detailed definitions for the title I and title II indicators after further consultation with representatives identified in section 502(b) of WIA. The Departments will consult further on the indicator definitions, including taking into account factors such as the degree of difficulty and expense of collecting data and reporting on the measures.

3. *Negotiations:* As noted at § 666.120(a), the Department will provide further guidance on each of these areas after additional consultation. Section 666.120(b) addresses the requirement that States must submit expected or proposed levels of performance for the core indicators and customer satisfaction indicators for years one through three of the State Plan. The Department may require States to express levels of improvement as a percentage improvement over the previous year's actual performance. The Department recognizes that continuous improvement is more than incremental increases in performance and will develop a comprehensive and rigorous approach to integrate continuous improvement at all levels of the workforce investment system. The Department received input that underscored this need to view continuous improvement as a system building activity, not a compliance activity.

4. *Participants Included in Measures:* The Department was requested to clarify when a customer becomes a participant for the purpose of applying the core indicators of performance. Section 666.140 explains that all individuals, except for those adults and dislocated workers who receive services that are self-service or primarily informational, must be registered and included in the core indicators of performance. The Department will issue guidance to further specify which activities and services require registration and which ones do not. In addition, § 666.140(b) implements the requirement that a standardized record must be completed for registered participants.

5. *Wage Record Data.* Section 136(f)(2) of the Act requires States to use quarterly wage records, consistent with State law, to measure progress on the core indicators of performance. Section

666.150 clarifies that each State must describe its strategy for using quarterly wage record data for performance measurement in the State Plan. The State Plan must also identify the entities that may have access to the wage record data for this purpose. In addition, § 666.150(c) defines ''quarterly wage record information'' (1) as wages paid to an individual, (2) the individual's social security number (or numbers if more than one), (3) the employer's name, address, State where located, and (4) the Federal employer identification number (when known). As requested, the Department will continue to explore the implications and provide guidance for complying with the confidentiality requirements at section 444 of the General Education Act (20 U.S.C. 1232g (as added by the Family Educational Rights and Privacy Act of 1974). Furthermore, the Department will continue to take into account concerns about possible violations of State unemployment compensation laws, confidentiality and privacy statutes and wage record collection systems. The Department will issue further guidance about the use of quarterly wage records.

Subpart B—Incentives and Sanctions for State Performance

1. *Criteria:* Section 666.200 restates the eligibility criteria for States to apply for an incentive grant. Section 666.210 addresses the use of incentive funds for one or more innovative programs consistent with requirements of title I of WIA, title II of WIA and the Carl D. Perkins Vocational and Applied Technology Education Act.

2. *Timing:* There were suggestions that the Department postpone the incentive program until a State's second year progress report is received. Additional time has also been requested to enable the workforce investment system to have a year of performance information to assist in establishing baseline levels and to learn more about using the unemployment compensation wage records for performance measurement and about the data and reporting systems for title II Adult Education and Literacy programs and Carl D. Perkins programs. The Department recognizes these concerns and is considering available options. The regulations do not address the timing issue.

3. *Awards:* Section 666.230 explains that the Secretary of Labor will consult with the Secretary of Education and issue annual instructions listing the amounts of incentive funds available to each eligible State and giving application instructions. The list will be developed after annual performance reports are received and will be based on the reported performance. It also describes the factors that will be taken into account in determining the amount of Incentive Grant awards.

4. *Sanctions:* Section 666.240 explains that States failing to meet for any program adjusted levels of performance for core indicators and the customer satisfaction indicators for any program, in any year, will receive technical assistance, if requested. If a State fails to meet the required indicators for the same program for a second consecutive year, the State may receive a reduction of as much as five percent of the succeeding year's grant allocation.

Subpart C—Local Measures of Performance

Section 666.300 explains that each local workforce investment area will be subject to the same 15 core performance indicators and two customer satisfaction indicators that States are required to address. Governors may elect to apply additional performance indicators to local areas. Section 666.310 states that local performance levels will be based on the State adjusted levels of performance and negotiated by the Local Board and chief elected official and the Governor to account for variations in local conditions.

Subpart D—Incentives and Sanctions for Local Performance

Section 666.400(a) restates local area eligibility for State incentive grants. Section 666.400(b) states that the amount of funds available for incentive grants and specific criteria to be used are determined by the Governor. Section 666.420 also explains that local areas failing to meet agreed upon levels of performance will receive technical assistance for any program year. Governors must take corrective actions for local areas failing to meet the required indicators for two consecutive years.

Part 667 Administration Provisions

Introduction

This part establishes administrative provisions which apply to WIA programs conducted at the Federal, State and local levels. These regulations are written to clarify what was written in the Act and to assemble all of the administrative requirements from the various parts of the Act and other applicable sources in order to facilitate the administrative management of WIA programs.

Subpart A—Funding

This subpart addresses fund availability. Questions have been raised about to reallotment and reallocation focused on procedures and amounts. The regulation clarifies that the amount reserved for the costs of administration is excluded from the calculation of unobligated balances upon which reallotment/reallocation are to be based. The regulation also emphasizes that any amount to be recaptured and the reallotment/reallocation are to be separately determined for each of the three funding streams. Thus, for example, it is possible that a State may be subject to recapture of youth funds while receiving a reallotment of adult funds. The Department will provide additional guidance on these processes.

Subpart B—Administrative Rules, Costs and Limitations

1. *Fiscal and Administrative Rules:* This subpart specifies the Rules applicable to WIA grants in the areas of fiscal and administrative requirements, audit requirements, allowable cost/cost principles, debarment and suspension, a drug-free workplace, restrictions on lobbying, and nondiscrimination. This subpart also addresses State and Local Board conflict of interest and program income requirements, procurement contracts and fee-for-service use by employers, nepotism, responsibility review for grant applicants, and the Governor's prior approval authority in subtitle B programs. Section 667.170 sets forth the Department's authority to perform a responsibility review of potential grant applicants. The Department may review any information that has come to its attention as part of an assessment of applicant's responsibility to administer Federal funds. The responsibility tests include the items set forth in paragraphs (a)(1) through (a)(14). In this section, the term ''include'' is used as it is throughout the Interim Final Rule, to indicate an illustrative, but not exhaustive list of examples.

2. *Administrative Costs: Administrative Cost Limits:* Section 667.210 restates the provision of the Act which set a State level administrative cost limit of five percent of total funds allotted to the State by the Department and a local administrative cost limit of 10% of funds allocated by the State to the local area. It also provides that the cost limitation applicable to awards under subtitle D will be specified in the grant agreement. In addition, this regulation includes a provision which excludes from the administrative cost limitation calculation the acquisition

costs of hardware and software used for tracking and monitoring participants, and for collecting, storing and disseminating information required as a core service under the Act.

Definition of Administrative Costs: Section 667.220 provides the Department's definition of Administrative Costs. To comply with the statutory requirement for consultation with the Governors in developing this definition, the Department consulted with representatives of the Governors and included both State and local stakeholders in the discussion. In addition to the input received through the consultation, the Department received suggestions related to the definition of administrative costs in various forums and by direct communications from a number of different sources. The key theme which emerged is that the function and intended purpose of an activity should be used to determine whether the costs associated with it should be charged to the program or administrative cost category.

The Department received input regarding what to include and what to exclude from the definition of administrative costs. There were specific recommendations that costs of information technology and costs associated with continuous improvement activities be excluded from the administrative cost category. These suggestions helped the Department as it framed the regulation which defines administrative costs.

The Department valued this consultation and carefully considered all input and crafted its definition to incorporate this function-based approach. The regulation enumerates those functions of State Boards, Local Boards and boards of chief elected officials which are classified as administrative and indicates that those costs and the costs of like activities/functions performed by One-Stop operators are classified as administrative costs. The regulation also includes additional cost classification guidance to clarify areas where questions have arisen concerning the allocation of costs between the program and administrative categories. The regulation provides the system with the flexibility needed to allocate costs to the program or administrative cost category based on the purpose or nature of the activity or function. As a result, the locus of responsibility and intended purpose of the function, whether direct or indirect, determines the appropriate cost category.

3. *Prohibited Activities:* Sections 667.260 through 270 address a number of prohibited activities that are located in various sections of the Act. The regulation clarifies the Department's interpretation that the Act's prohibition on employment generating activities, economic development and other similar activities does not apply when they are directly related to training of eligible participants. It is not intended that such activities must benefit individually identified participants to be allowable, rather, such approaches as first source hiring agreements that promise to benefit participants as a group would suffice. The Rule includes a list of activities that may be provided as allowable economic development or similar activities. This list is not meant to be exclusive. There may be other activities of a similar nature that are directly related to training for eligible individuals that are permissible under WIA. In this section, the term include is used, as it is throughout the Interim Final Rule, to indicate an illustrative, but not exhaustive, list of examples. With respect to the prohibition of WIA support of inducing relocation of a business, the regulation provides a process for a preaward review to ensure that funds are not spent in violation of the provision. Section 667.269 specifies where the procedures for resolution of violations of these prohibitions, as well as the related sanctions and remedies, can be found.

Sectarian Facilities: Section 667.266 restates the Act's prohibition on the employment of participants in the construction, operation, or maintenance of a facility that is used for sectarian instruction or as a place of religious worship, and describes the Act's limited exception to this prohibition.

4. *Impairment of Collective Bargaining Agreements:* Section 667.270 lists the safeguards that ensure that participants in WIA activities do not displace other employees. These include the prohibition on impairment of existing contracts for services or collective bargaining agreements that is contained in WIA section 181(b)(2). When an employment and training activity described in WIA section 134 would be inconsistent with a collective bargaining agreement, the Rule requires that the appropriate labor organization and employer provide written concurrence before the activity begins.

5. *Labor Protections:* Section 667.272 requires that individuals engaged in on-the-job training or employed in activities under Title I of WIA must be paid at the same rate, including the same periodic wage increases, as other workers who are similarly situated in similar occupations by the same employer and who have similar training, experience and skills. Wage rates must be in accordance with applicable law, and must be at least equal to the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (FLSA) (29 U.S.C. 206(a)(1)) or the applicable State or local minimum wage law, whichever is higher. The determination of whether an individual is ''employed'' in a WIA activity for purposes of this provision, including participation in paid or unpaid work experience, must be made in accordance with the requirements of the FLSA. Questions regarding the application of FLSA to participants in WIA activities should be directed to the DOL, Employment Standards Administration, Wage and Hour Division.

Section 677.274 mandates that all Federal and state health and safety standards and state workers' compensation laws applicable to the working conditions of similarly situated workers are equally applicable to the working conditions of participants in programs and activities under Title I of WIA. Paragraph (b)(2) clarifies the application state workers' compensation laws to individuals engaged in work experience. If a State workers' compensation law does not apply to a participant in work experience, insurance coverage must be secured for injuries suffered by the participant in the course of such work experience.

6. *Nondiscrimination:* Section 188 of the Act prohibits discrimination on the basis of race, color, national origin, sex, age, disability, religion, political affiliation or belief, participant status, and against certain noncitizens. It also requires the Secretary to issue regulations ''necessary to implement this section not later than one year after the date on enactment'' of the Act. The Department anticipates the publication of an Interim Final Rule to implement the nondiscrimination and equal opportunity provisions of the Act prior to July 1, 1999 (63 FR 62003, November 9, 1998). The Rule will be located at 29 CFR part 37.

The provisions of WIA sec.188 are substantially similar to sec. 167 of JTPA, as amended. As a consequence, the Department anticipates little difference between 29 CFR part 37 and the regulation implementing sec. 167.

Section 667.275(a) provides that recipients must comply with the nondiscrimination and equal opportunity provisions of the Act and its implementing regulations. This provision is substantially similar to that found in § 627.210, the companion section of the regulations implementing

the JTPA. A slight modification has been made to the language to eliminate any possible confusion about who is covered by sec. 188. The term recipient, as used in § 671.275, has the same broad meaning as that found in other civil rights regulations (for example, in 29 CFR parts 31, 32, and 34), and that meaning will be carried over to 29 CFR part 37. In the context of § 667.275, a recipient is any entity that receives funds under title I of the Act (except for the ultimate beneficiary) whether the assistance comes directly from the Department, through the Governor, or through another recipient. Some entities may be identified as vendors or subrecipients, or some other term. However, for the purpose of § 667.275, these entities are considered recipients and subject to section 188 and its implementing regulations. Section 667.275 generally follows the language in § 667.210, but provides for the exception found in sec. 188(a)(3). This exception allows for using funds under title I of WIA to employ participants in maintenance of a part of a religious facility that is not primarily or inherently devoted to sectarian instruction or religious worship, in a case in which the organization operating the facility is part of a program or activity providing services to participants.

Subpart C—Reporting Requirements

There were suggestions and questions related to the mechanics of reporting. In response, § 667.300 indicates that the Department will issue instructions and formats for financial, participant and performance reporting. We anticipate that reporting will be done electronically. Section 667.300 also provides that a grantee may impose different reporting requirements on its subrecipients including different forms, shorter due dates, etc. When a State is the grantee and plans to impose different reporting requirements, it must describe them in its State Plan. Section 667.300(e), concerning the Annual Performance Progress Report specifies the situations under which a sanction, including a possible reduction in the subsequent year's grant amount, may be imposed.

Subpart D—Oversight and Monitoring

This subpart includes regulations which provide for both Federal and State oversight responsibilities. For formula grants, the Department's monitoring of the States will be conducted primarily at the State level and may include a sample of subrecipients. The regulation emphasizes the requirement that States funded under this program develop a Statewide monitoring system. States must be able to demonstrate that the monitoring system meets certain regulatory requirements. One way to so demonstrate is to make a monitoring plan available for Federal review. The regulation which specifies the oversight roles and responsibilities of WIA grant recipients and subrecipients reflects the statutory language of sections 183 and 184 of the Act.

Subpart E—Resolution of Findings from Monitoring and Oversight Reviews

1. *Resolution of Findings and Grant Officer Resolution Process:* This subpart addresses the resolution of findings that arise from audits, investigations, monitoring reviews, and the Grant Officer resolution process. The processes are essentially the same as they were under JTPA.

2. *Nondiscrimination:* To avoid confusion about which procedures apply to nondiscrimination findings, the regulation specifies that findings arising from investigations or reviews conducted under nondiscrimination laws are to be resolved in accordance with section 188 of the Act and the applicable Department of Labor nondiscrimination regulations. While 29 CFR part 34 is currently in effect, the Department will issue a new 29 CFR part 37 to specifically implement the provisions of section 188 of WIA. Therefore, States which do not fully or partially implement WIA before July 1, 2000 will be subject to the rules of 29 CFR, part 34 during PY 99. All States that implement early, including those which implement under a transition plan, will be subject to the new rules at 29 CFR, part 37, during PY 99.

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

There were recommendations for and against the application of grievance procedures to One-Stop partners not funded by the Department. In response, the regulations allow such partners to file a grievance or complaint when they are affected by the WIA system, but do not attempt to address any grievance or complaint that might arise about their own programs. Grievance procedures available in partners' programs are those available under the law authorizing that program. A person who believes that a partner may have violated WIA may use the grievance procedure available under WIA.

1. *Grievance Procedures*: Section 667.600 describes those elements required for local area, State and other direct recipient grievance procedures. It also specifies that complaints of discrimination follow the resolution process at sec. 188 and Department of Labor nondiscrimination regulations. The regulation specifies the two situations in which the Department will investigate and/or review allegations that arise through local, State and other direct recipient grievance procedures. In particular, as part of the State's responsibilities, it must provide an opportunity for a timely review of local level grievance adjudications.

2. *Complaints and Appeals*: Sections 667.630–650 address complaints and reports of criminal activity, and the additional appeal processes which a State must have for its WIA programs for nondesignation of local areas, termination of eligibility or denial of training providers, and testing and sanctions for use of controlled substances.

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

This subpart addresses sanctions and corrective actions, waiver of liability, advance approval of contemplated corrective actions, as well as the offset and State deduction provision.

Subpart H—Administrative Adjudication and Judicial Review

This subpart specifies those actions which may be appealed to the Department's Office of Administrative Law Judge (OALJ), and the rules of procedure and timing of decisions for OALJ hearings. Section 667.825 sets forth special requirements that apply to reviews of MSFW and INA grant selections. These rules are similar to those currently in effect under JTPA. Section 667.840 also provides for an alternate dispute resolution process. In addition, § 667.850 describes the authority for judicial review of a final order of the Secretary.

Subpart I—Transition

Section 667.900 indicates that a Governor may reserve up to two percent of Program Years 1998 and 1999 JTPA formula funds, of which not less than 50% must be made available to local entities, for expenditure on WIA transition planning activities. It specifies that the source of funds may be any one or more of JTPA's titles or subtitles. It includes a provision that expressly states the Department's position to exclude funds so reserved from any calculation of compliance with JTPA cost limitations. The Governor must decide to make the funds available to one or more local entities. These might include a local JTPA entity, a local entity established for the purpose

of operating WIA programs, or any other local entity. Additional information and guidance on the process of transition will be forthcoming.

Part 668—Indian and Native American Programs

Introduction

This part establishes the operation of employment and training programs for Indians and Native Americans under the authority of section 166 of the Act. This part is broken into subparts dealing with: Purposes and policies; service delivery systems; customer services; youth services; services to communities; grantee accountability; planning and funding; administration; and miscellaneous provisions such as waivers. In crafting the section 166 regulations, the Department attempted to represent the program from the grantees' perspectives, and to provide an organization which is relatively easy to follow and as comprehensive as possible without repeating major sections of the general WIA administrative regulations contained in part 667. Cross-references to that part are provided in the body of these regulations, when appropriate.

Need for Regulations

There are several reasons why these regulations exist separately, and why they contain the areas regulated. The primary reason separate regulations are drafted for the section 166 program is that it is clearly the intent of Congress and the Administration that there be a supplemental employment and training program under WIA solely for Indians and Native Americans, with requirements, policies, and procedures unique to that customer group. The current grantee community stated a desire to have regulations which are as self-contained as possible. Therefore, some material covered under the regulations implementing the State workforce investment system is repeated in these regulations, but usually not in the depth contained in part 667. Cross-references direct the grantee to sections where greater detail is provided.

Subject Areas Covered

The specific subject areas covered by these regulations, and cited above, are being regulated because the language of section 166 does not cover the detailed operation of the program. Statements of policy are made to clearly delineate the Department's position with respect to the section 166 program and the nature of the relationship between the Department and its section 166 grantees. Areas such as those concerning the designation of section 166 grantees must be regulated in order to clarify the statutory provisions, and it is desirable to clearly define these procedures and requirements for ease of compliance by those who are or wish to be part of the system. The subparts in this Interim Final Rule represent a logical sequence, from policies and purposes through miscellaneous provisions, generally representing the reality of program implementation as experienced by the typical grantee. This sequence reflects grantee comments. The primary vehicle for soliciting input on these regulations is the Native American Employment and Training Council. Drafts of areas under consideration for regulation were circulated to the grantee community by the Council, in their statutorily-mandated advisory role. Input received from grantees came either through the Council or directly to ETA's Division of Indian and Native American Programs (DINAP), either in writing (including faxes), orally (over the telephone), or via E-Mail. There were also discussion sessions held at the three multi-regional meetings in Washington, DC, Albuquerque, and Maui, as well as at the Advisory Council meeting in November in Washington, DC. Each of these meetings generated suggestions which were considered in crafting the present regulations. Input was also received through individual members of the Work Group, which is a body composed of Council members and other select grantee program directors, and is an official Council subcommittee. All in all, well over 50 parties submitted views on various aspects of the draft regulations. The most significant input is synopsized below.

Areas Not Covered

Because a Final Rule will be effective for PY 2000, this Rule was designed to address issues that affect grantees who implement in PY 1999. The Department will issue program direction and administrative guidance to assist implementing grantees. These areas are as follows:

1. *Transition to WIA*: Although several sections allude to the transition, no detailed instructions are included in this Rule. Because this event will occur only once for each grantee, the Department decided that the conversion from JTPA to WIA would be more appropriately covered in administrative guidance to be completed and distributed to grantees at a later date. This includes the closeout of JTPA grants.

2. *Public Law 102–477*: A separate subpart was suggested to address the various aspects of the demonstration under Pub. L. 102–477, The Indian Employment, Training and Related Services Demonstration Act of 1992, including procedures for transitioning from a JTPA/WIA grantee to a ''477 tribe.'' Because no separate regulations are authorized for the demonstration, and participation is limited by law to Federally-recognized tribes and Alaska Native entities, it was decided that such a subpart would be inappropriate. However, § 668.930 clearly states that grantees who qualify may participate under Pub. L. 102–477. The Department considers this to be an adequate reference for these regulations.

3. *Supplemental Youth Services*: The Department believes that establishing a separate subpart for youth services adequately covers the provision of youth services for these regulations, but it recognizes that further instruction in the creation and submission of these youth plans will be necessary. In order to provide the flexibility needed to adapt to these changes as they occur, the Department believes it is appropriate at this time to provide policies and procedures for the youth program in program guidance and policy documents.

4. *Performance Measures and Standards*: While performance measures and standards are referenced in § 668.460 and § 668.620, these regulations do not specify which measures may or must be used, or how accompanying performance standards will be derived. The development of revised performance measures and levels for Native American employment and training grantees has been on-going for several years under JTPA, and will continue under WIA. This effort is considered to be on a ''separate track'' from the development of regulations, whether under JTPA or WIA. When section 166 performance measures and standards are finalized, they will be transmitted to the grantees in a separate administrative issuance, and will not appear in regulations.

Subpart A—Purposes and Policies.

1. *Self-determination*: In § 668.120, the Department clearly commits to the principles of self-determination and sovereignty, and names DINAP as the ''single organizational unit'' required in the Act to administer section 166 programs. In addition to the language in the Act, which the Department thought it appropriate to repeat by paraphrasing, the Department has added a statement on helping customers achieve personal and economic self-sufficiency. The Department considers this statement to be one of the prime purposes of all

Federal employment and training efforts, and especially appropriate to the Native American population.

2. *Consultation*: The operating principle of ''partnership'' is embodied in these regulations at § 668.130, which paraphrases section 166 (h)(2) of the Act.

3. *Definitions*: These regulations do not repeat definitions covered in the Act or in the main definitions section at § 660.300. The term ''underemployed'' is defined in this section of the regulation because it is not defined elsewhere, and the definition of ''family income'' is specific to Indian and/or Alaska Native circumstances. The Department has made clarifications to the definition of ''family income'' for section 166 purposes. The regulations include a section from the Alaska Native Claims Settlement Act (ANCSA) (43 U.S.C. 1626(c)) concerning the treatment of income for Alaska Natives which is applicable by law to all Federally-funded programs.

4. *Applicable Regulations*: To create a more ''user friendly'' document, the Department added § 668.140 to the Rule, which describes what other regulations affect upon section 166 program operation.

Subpart B—Service Delivery Systems

1. *Designation*: The current JTPA designation procedures, eligibility requirements, competition hierarchies, etc., are retained in this Interim Final Rule for PY 1999. WIA section 166 requires that grantees be selected on a competitive basis except where a waiver of competition is granted due to successful performance. The requirements for the selection of grantees through the designation process are set forth in § 668.200—§ 668.280. In order to be selected as an INA grantee, an entity must have legal status as a government or agency of a government, a private non-profit corporation or a consortium containing one of these groups; it must have the ability to administer federal funds as determined under § 668.220; and it must meet certain eligible population requirements. To be consistent with the goal of the Indian Self-Determination and Education Assistance Act and to provide Indians with the opportunity to achieve ''self-determination essential to their social and economic well-being,'' the rule, at § 668.210, gives priority in the competitive designation process to federally-recognized Indian tribes, Alaskan Native entities and consortia of these entities. However, as part of the competitive selection process, no entity may be designated as an INA grantee unless it demonstrates that it has the ability to administer federal funds, as defined in § 668.220. The Department believes that this process is consistent with the mandates of the Indian Self-Determination and Education Assistance Act and with the requirement that grants, contracts, and cooperative agreements be made on a competitive basis.

The Department is establishing a new designation threshold for PY 2000 and beyond in § 668.200(b)(3), with allowances made for smaller grantees wishing to participate in the demonstration under Pub. L. 102–477. Also for PY 2000, the dates for submission of the Notice of Intent and any additional required supporting documentation, contained in §§ 668.240 and 668 .250, are different from those for PY 1999, primarily to allow both applicants and the Department more time to implement the designation process, especially in the event of more than one applicant competing for a given service area. An area of frequent comment involved the current JTPA criteria for designation as a Native American grantee, specifically the issues of size and the competition hierarchy. Most of the suggestions received were from smaller Federally-recognized tribes, either without the currently required 1,000 Indian or Native American population in their service area or without a significant reservation land base from which to claim a Hierarchy 1 preference. There were suggestions that the Department abandon the numbers altogether, and instead assign a dollar threshold which would be a better indication of grantee viability. For the PY 2000 designation and beyond, the Department has chosen $100,000 as the minimum funding threshold. This includes any supplemental youth services funds awarded to the grantee. In response to requests from some smaller grantees, the Department has included in § 668.200(b)(3) a statement ''grandfathering in'' those current grantees which do not meet the $100,000 threshold for PY 2000 and beyond. Also in response to suggestions received from some smaller, non-JTPA tribes wishing to participate in the demonstration under Pub. L. 102–477, the Department made the $100,000 limit applicable to total resources to be included in the ''477 plan.'' This will enable the smaller Federally-recognized tribes to receive their own WIA funding and participate in the demonstration authorized by P.L. 102–477, if their total employment and training funds to be included in the plan equal or exceed that dollar threshold. There were also suggestions that the Department attempt to accommodate Congressionally mandated service areas, States and counties identified in statute as comprising the service area of a specific tribe into the hierarchy system, which these draft regulations attempt to do. The Department will continue to review this issue as it develops the Final Rule.

2. *Geographic Coverage*: To address problems which have arisen under JTPA, § 668.294 states the Department's position on covering specific geographic areas for which there are no viable entities willing or able to provide services under section 166 of WIA. The Department will make every effort to fund suitable grantees for each area. If a suitable grantee cannot be found, the funds for that service area will be used for technical assistance or distributed among other grantees.

3. *Funding Formula(s)*: As under JTPA, the WIA rule allocates funds for Native American grantees by geographic service area, based upon the funding formula set forth in § 668.300. The Department has chosen to allocate funds by formula rather than base grant amounts upon the levels proposed in grant applications for several reasons. First, other than a requirement that the Department consult with the grantee community on ''developing a funding distribution plan,'' the Act is silent as to how funds are to be distributed among selected grantees. The legislative history does not indicate any Congressional intent to deviate from the Department's traditional method of funding by a geographic allocation formula. The Department believes that experience in funding by formula under JTPA for over 15 years has demonstrated success in ensuring sufficient funds for a high level of service to customers. Once a grantee demonstrates that it meets the minimum threshold for designation, including the ability to administer funds under § 668.220, the funding formula ensures that sufficient funds are available so that selected grantees can operate a viable, successful program. For these reasons, it is the Department's view that the proposed allocation formula of § 668.300 is consistent with the requirement that grants, contracts and cooperative agreements be made on a competitive basis. The current JTPA section 401 funding formula is retained in this Rule, pending further discussions on the subject during the formulation of the Final Rule during 1999. Also included in § 668.296 are the hold-harmless provisions, carry-in limitations, and the 1% set-aside for technical assistance and training (TAT) contained in the current JTPA regulations or policy.

Subpart C—Services to Customers

1. *Services to Customers*: The same basic JTPA section 401 eligibility criteria are being retained for the section 166 program. The allowable services are taken straight from the Act, and listed in this subpart for clarity and to further promote the ''user friendly'' approach of the regulations. Indian-specific activities, such as support of the Tribal Employment Rights Office (TERO), have been included, as well as the allowability of sequential enrollment or enrollment of participants in more than one WIA program.

2. *Restrictions on Allowable Activities*: Because of the importance of some of these restrictions, such as the prohibition on using WIA funds for economic development in the section 166 program, the Department included § 668.350 in these regulations rather than merely referring to similar sections in the State workforce investment system regulations. Section 668.350 lists these restrictions, primarily from WIA sections 181 and 195.

3. *Interaction with One-Stop Centers*: Section 668.360 recognizes that section 166 grantees are ''mandatory partners,'' in the One-Stop delivery system, and reiterates the statutory requirement for a memorandum of understanding (MOU) between the section 166 grantee and the Local Board. This section outlines the provisions the MOU must contain, and the circumstances under which the Local Board may engage the section 166 grantee in these negotiations. Because of the remote location(s) of some section 166 grantees (their distance from the nearest One-Stop center) and other logistical problems, especially for tribes serving rural areas, the Department recognizes that successfully executing a meaningful MOU with the Local Board may not always be possible. Thus, § 668.910 allows Federally-recognized tribes to request a waiver of section 121 requirements with the agreement of the Local Board. Although financial contribution to the operation of a One-Stop center is a matter of local negotiation, the funding and audit issues involving the restrictions on the uses of section 166 funds must be taken into consideration. The primary argument against having to financially support the One-Stop centers is that the State is already funded to serve Native Americans, at least for core services, and all requests for intensive and training services would probably be referred to the Native American grantee. The INA Rules specify the INA grantee's responsibility as a One-Stop partner. This part does not relieve the One-Stop system of its responsibility to serve Native Americans in the same manner as it serves all other individuals or specialized groups. Some parties also expressed concern that any funds provided to another agency which could not be directly tied to the provision of services to Native Americans could result in a disallowed cost to the INA grantee. In response to suggestions, the Department took a closer look at section 121 of WIA and attempted to write regulations in such a way that interaction with One-Stop systems would adhere to statutory requirements, but not dictate the exact nature of section 166 grantee interaction with the One-Stop system. Additional questions which were raised concerning the limitation on section 166 funds, that they only be used for the benefit of Native Americans. Questions dealt with financial support of a One-Stop center, and how this prohibition would be documented for audit purposes. Section 668.340 clearly states that no expenditures of section 166 funds may be made for individuals not eligible under section 166. Part 662 contains specific language that addresses One-Stop arrangements, including a similar provision providing that a partner's resources may only be used to provide services to individuals eligible under the partner's authorizing statute. This section also requires the grantees to describe the process for negotiating the MOU with their Local Board in their Two Year Plan.

4. *Payments to Participants*: Section 668.370 contains the same requirements about minimum wage coverage, the payment of allowances, the applicability of labor standards, and limitations on participant wages that were in effect under JTPA in 20 CFR part 632. The Department considers it important, for ease of reference by the grantees, to clearly state these requirements in regulations rather than cross-referencing the Act or other statutes. The Department also included a statement in § 668.370 specifically allowing the payment of incentive bonus payments to participants who meet or exceed established goals, to avoid audit questions which have arisen under JTPA section 401 activities.

5. *Grantee Capacity Building*: Section 668.380 reflects the Department's intention to provide section 166 grantees with technical assistance and training as required by section 166(h)(5) of the Act.

Subpart D—Supplemental Youth Services

It is significant that this is a separate subpart. Although this program is only available to certain types of entities, and eligible grantees will cover the provision of supplemental youth services in their Two Year Plan rather than in a separate document, the Department received suggestions for a separate youth subpart for clarity's sake. The Department agrees that supplemental youth services warrants a separate subpart in this Rule. In part 668, the youth requirements are covered in subpart D, with a minimum of definition beyond that provided in the Act, except for the funding formula (§ 668.440) and the provisions making the hold harmless factor, the reallocation provisions, and provisions concerning the use of funds not claimed by grantees applicable to youth funds as well. Section 668.460 covers the applicability of performance measures and standards to the supplemental youth program. A number of suggestions received from ''urban'' grantees indicated their desire to receive supplemental youth services funding. However, after further review, the Department decided that the language of the statute did indeed limit recipients of these funds to those entities serving Indian/Alaska Native/Native Hawaiian youth residing on or near a reservation. The regulations clarify additional details concerning the provision of supplemental youth services, such as the requirement that most participants be low-income individuals, that the definition of ''eligible youth'' applies to section 166 programs, that performance measures and standards are applicable to the supplemental youth programs, and that the funding provisions for the adult program (reallocation, carry-in limits, use of funds, etc.) also apply to youth programs.

Subpart E—Services to Communities

Not contained in the current JTPA section 401 regulations, this subpart, addressing services to communities, was included for purposes of clarification, following the recommendations of the Work Group. The regulations discuss the kinds of services that can be provided to communities and employers, such as customized training and child care. Many of these services, especially to communities at large, have been provided under JTPA for some time, but have not been discussed previously in regulations. Some of the provisions found here, however, appear in 20 CFR part 632 in various places, such as the reference to the Indian Financing Act of 1974, contained in § 668.520.

Subpart F—Accountability for Services and Expenditures

1. *Contents of Subpart*: This subpart reflects one of the Act's key reform principles of strengthened accountability, and contains sections on various aspects of grantee ''accountability,'' including the nature of the INA grantee's accountability to the Native American community, to the Department, and to the individual participants. Sections covered here include reporting, performance measures and standards, the prevention of fraud and abuse, grievance systems, and equal access provisions which are similar to the corresponding JTPA section 401 provisions. Several of the regulatory provisions, such as those at § 668.630(c) and (d) (gifts and nepotism), are unique to the Native American grantee program.

2. *Service Preference:* There has always been a controversy in Indian programs, dating back to JTPA and its predecessor, the Comprehensive Employment and Training Act (CETA), concerning the ability of a tribe to grant preference to its own tribal members at the expense of, or to the exclusion of, other Native Americans residing in its service area. These regulations clearly state that these exclusionary practices are prohibited. However, in response to grantee concerns, the regulations state that grantees may still identify target populations to be served (for example, the disabled, Temporary Assistance to Needy Families (TANF) recipients, substance abusers) and have this priority approved in the Two Year Plan.

Subpart G—Planning/Funding Process

This subpart contains details about plan formulation and submission, including the statutory requirement for a Two Year Plan for delivering comprehensive WIA services. Also included here are the Department's procedures for plan review and approval, and the requirements for subsequent plan modification. These procedures are being added to make the regulations more ''user friendly,'' and because there are changes from the procedures used under JTPA, such as the change from a one-year plan to a two-year plan, and the dropping of a requirement for a separate summer plan.

Subpart H—Administrative Requirements

1. *Contents of Subpart:* This subpart describes in detail the systems each grantee must have in place to properly administer a section 166 program under WIA. It also addresses cost allocation and allowability, audit requirements, applicable cost principles, cash management requirements, and the treatment of program income. Much of this subpart consists of cross-references to the appropriate general administrative sections of 20 CFR part 667, or to other Departmental or Federal regulations.

2. *Administrative Cost Limits:* By far the majority of suggestions received involved the issue of the administrative cost limit under WIA. Section 166 of the Act is silent on the level of administrative costs permitted. Many felt that the 10 percent (10%) limit on local workforce investment areas in title I would place a tremendous strain on even the largest programs, while making it impossible for smaller grantees to operate at all (97 out of 183 JTPA section 401 grantees receive less than $100,000 annually). The grantees who submitted suggestions all wanted at least the 20% administrative cost limit currently in place for JTPA, section 401, and the INA Welfare-to-Work (INA WtW) programs. To allay concerns over adjusting to new rates, § 667.210(b) provides that the INA administrative cost ceiling is to be established in the grant agreement. Any adjustments to the 10 percent limit will be addressed in the grant agreement, and will be based on the particular needs of the grantee.

Subpart I—Miscellaneous Program Provisions

Covered in this subpart are the regulatory and statutory waiver provisions under section 166(h)(3) of WIA, which were not available under JTPA. This includes the requirements for documenting a waiver and circumstances under which section 121 requirements may be waived, and provisions which may not be waived. Also covered are the allowability of participation in the demonstration under Pub. L. 102–477, and an elaboration of the role of the Native American Employment and Training Council. The latter section was added to clearly state the role of the Council in the consultative process, and to support its activities.

Part 669—Migrant and Seasonal Farmworker Programs under Section 167

Introduction

This part provides the program and administrative requirements for the operation of the Migrant and Seasonal Farmworker (MSFW) program, including the MSFW Youth program under section 127(b)(1)(A)(iii). Part 669 is organized in five subparts addressing: purpose and definitions; the MSFW program's service delivery system; MSFW customers and available program services; performance accountability, planning and waiver authority; and the MSFW youth program.

The MSFW program is administered nationally in the Department by using a limited competitive process to select applicants for grant awards. The selected grantees operate the grant programs in most States and Puerto Rico. The vehicle for soliciting and receiving comments during the development of the MSFW regulations is the Migrant and Seasonal Farmworker Employment and Training Advisory Committee. At the Committee's first meeting on November 5 and 6, 1998, two workgroups of volunteers from the grantee community were formed to assist the Department in developing the policies underlying these regulations. The members met to develop an initial discussion draft and continued providing comments by e-mail.

Subpart A—Purpose, Definitions, and Federal Administration

This subpart covers the statement of purpose at § 669.100, and provides applicable farmworker-specific definitions and Federal administrative requirements.

1. *Definitions:* The definitions in this subpart are those unique to this program. The major issues requiring definition are ''allowances,'' ''capacity enhancement,'' and ''emergency assistance.'' (Other terms are defined for clarification.)

Allowances—The MSFW program permits payments of allowances to enable individuals to participate in classroom training. The economic condition of most farmworkers does not permit their participation in full-time training without on-going financial assistance. The definition of ''allowances'' establishes when allowance payments are permitted and the maximum hourly rate. Grantees may use a lower rate.

Capacity Enhancement—Section 167 of WIA authorizes the Department to provide funds for capacity enhancement as part of technical assistance activities. The Rule provides that capacity enhancement includes staff training for grantee staff members. The MSFW program has a history of using discretionary funds to finance some of the costs of grantee staff development activities. The definition authorizes the continuation of such activities.

Emergency Assistance—Some parties expressed a need for reducing the administrative burdens relating to providing emergency assistance to farmworkers. These services are unique

for the MSFW program and address urgent needs of a short duration, such as medical, housing or food support required by MSFWs moving along the migrant stream. When applying for emergency assistance, farmworkers must provide personal and family information to demonstrate eligibility. The general program eligibility requirement of having to produce verifying source documentation such as annual tax returns that one would normally leave at home, frustrates grantees' attempts to respond to urgent needs of farmworkers. To rectify this problem, the regulation provides that when a person applies for emergency services only, an expedited eligibility determination process may be used. The process is expedited by exempting the grantee from requiring documentary evidence to support the farmworker's eligibility except regarding work authorization and compliance with Selective Service registration requirements. The farmworker's eligibility is established by a self-certification. This abbreviation of the application requirement for receipt of emergency assistance is consistent with the low unit cost of these services.

2. *Federal Administration:* Sections 669.120 and 669.130 provide that the Department's administration of the MSFW program will be under its national office, working directly with the operational grantees. Section 669.140 restates the Department's obligation to provide technical assistance. Sections 669.150 and 669.160 ensure consultation with the Secretary's Migrant and Seasonal Farmworker Employment and Training Advisory Committee. The MSFW Advisory Committee was established in 1998 under the Federal Advisory Committee Act (FACA) for this purpose, and it is intended that the Committee will advise the Department on a variety of MSFW program matters. Since WIA does not require the use of an Advisory Committee for the MSFW program, this section establishes by regulation the FACA consultative process for the MSFW program.

Subpart B—MSFW Program's Service Delivery System

This subpart contains provisions on the grantee selection process.

1. *Eligible Entities:* Section 167(b) of the Act requires that organizations seeking to operate MSFW programs demonstrate their familiarity with and an understanding of the target population. This capacity is critical to the entity's ability to effectively provide the services needed by MSFW's.

2. *General Approach to Service Delivery:* Grantees expressed concern that, without regulatory clarification, some Local Boards would refuse to recognize the MSFW grantee as a required partner in the One-Stop delivery system established under title I of the WIA. These regulations and those for the title I Adult and Dislocated Worker programs, clearly state that MSFW grantees are required partners in those local areas where grantee offices are located.

Grantees indicated that the regulations should provide for equitable availability of all WIA services to all farmworkers entering the One-Stop center doors. The primary service providers under Wagner-Peyser and the title I Adult and Dislocated Worker programs have a general responsibility to make their core, intensive and training services available to all eligible farmworkers on a basis that is equitable with other customer groups. The MSFW program has a specific responsibility to supplement the level of those services by offering farmworkers the services available under the MSFW program that are tailored for farmworkers. Although the services available from the MSFW program must include the general core services of the local One-Stop centers, the MSFW program provides services developed especially for addressing the unique needs of MSFW's.

To fulfill the required partner requirement, the MSFW grantee and the One-Stop centers must develop the coordination necessary for the effective delivery of One-Stop core services to farmworkers. This is to be achieved through the agreements negotiated between the MSFW grantee and the Local Boards. The resulting agreements, including appropriate cost sharing arrangements, are to be described in the Memorandum of Understanding. MSFW grantees have stressed the importance of having an operational structure under the regulations to establish good-faith negotiation of the MOU's. Without protections for ensuring the integrity of the MOU negotiations, these grantees believed that their participation at many One-Stop centers would be jeopardized. The specific environment expected is one that ensures the MSFW grantees have a level playing field for negotiating with the Local Boards. Both part 662 and § 669.220 make it clear that Local Boards and MSFW grantees must enter into good faith negotiations to develop an equitable assignment of roles, responsibilities and costs between them.

MSFW grantees have made it clear that they want to be recognized as required One-Stop partners only where it is geographically appropriate to their operations, stressing the importance of limiting the required MOU's within the States to those appropriate to the MSFW grantee's circumstances. This is due to the potential administrative burden in many States because of the large number of Local Boards with which MOU's would have to be negotiated. There is a clear preference for a regulatory provision permitting the negotiation of a single, Statewide MOU or limiting the required MOU's to those Local Boards where it is clearly meaningful, such as with those areas in which the MSFW grantee operates.

The regulations provide an operating structure for MOU negotiations. Section 669.350 states the MSFW grantees' obligations for providing the core services of the local One-Stop center to the farmworkers it serves. A corollary requirement exists for the Local Board under § 662.410(b). Basically, the process for addressing how respective obligations will be fulfilled is the negotiation of the MOU, as required for all local partners in a One-Stop delivery system. The regulation clarifies that the MOU's negotiated by the MSFW grantees shall provide the terms of necessary financial or in-kind compensation for services exchanged between the MSFW grantee and the Local Board. The matter of establishing an appropriate environment for negotiating MOU's is addressed in this section. It provides for ETA to determine when the MSFW grantee is responsible for failed negotiation of MOU's with Local Boards. Under the regulations for the One-Stop delivery system, any failure to execute a MOU with a required partner must be reported by the Local Board to the Governor, and by the Governor to the Secretary of Labor and to any other head of a Federal agency with responsibility for oversight of a partner's program. The regulation limits the required MOU's to those Local Boards located in areas where there is a grantee field office. This limitation establishes that the MSFW grantees are not required to negotiate MOU's with Local Boards serving geographic areas that are inappropriate for the MSFW program, such as areas where the MSFW program will not be operating. The Department encourages MSFW grantees to develop working relationships through electronic or other means for an appropriate purpose such as referral, in areas with large concentrations of MSFWS which are not served by a grantee field office.

3. *Termination:* Section 669.230 provides the grounds for terminating an MSFW grantee. The regulation provides authority for the Grant Officer to initiate

termination when there is a need to protect funds and when there is a substantial or persistent violation of requirements. It also outlines the procedures for emergency termination.

4. *Discretionary Account:* Section 669.240(b) authorizes the continuation of a discretionary account. Historically, the Department has been authorized to reserve up to six percent of the funds appropriated each year for the MSFW program to fund discretionary activities. These activities support those needs of MSFWs that are not met by the basic job training program. Such activities include grants to support housing programs for farmworkers, and ETA-sponsored technical assistance for grantees such as conferences, direct mini-grants for specific grantee needs, and other technical assistance activities. The delivery of technical assistance to grantee staff is consistent with the provision of ''capacity enhancement,'' described above. The funds also support the costs of the Secretary's Migrant and Seasonal Farmworker Advisory Committee. Section 669.240(b) continues this limited discretionary authority to use up to six percent of the funds appropriated under section 167.

Subpart C—MSFW Program Customers and Available Program Services

This subpart describes who is eligible for services provided under section 167 of WIA, the program responsibilities, and the nature and scope of the program activities authorized under the Act.

1. *Eligibility:* Section 669.320 summarizes applicant eligibility terms defined in section 167 (h) of the Act.

2. *Customer Approach:* Customer choice is a primary focus of WIA. The regulations are necessary to ensure that farmworkers have an opportunity to make choices about the services and training available to them. To meet these objectives, it is necessary to provide guidance to the MSFW grantees on serving their farmworker customers. This is achieved by providing services through a case management approach, which may include core, intensive, and training services, and related assistance and supportive services (§ 669.330). As provided in 20 CFR part 663, prior to intensive services, a participant must receive at least one core service, and prior to training services, a participant must receive at least one intensive service. The regulations provide, however, that the delivery of intensive services (§ 669.370) and training services (§ 669.410) may be combined under a single structure or continuum. To meet immediate needs of farmworkers and their families, § 669.360 authorizes grantees to provide emergency assistance—for example, services such as health care and housing assistance. This is an example of features within the MSFW program and these regulations to address the special needs of MSFW's. It illustrates how this MSFW program supplements through its diversity of approaches, the types of services available to farmworkers under the Adult and Dislocated Worker programs.

3. *Intensive Services:* Many farmworkers have special needs and require additional resources that the MSFW grantees are funded to provide. Accordingly, MSFW grantees provide intensive services, which may include individual employment plans, and may be based on objective assessments and periodic reviews of participant employment and training needs. Section 669.370 indicates the kinds of intensive services that are appropriate for MSFW's. This approach may differ from the service delivery design of a local One-Stop center because the MSFW program is intended to offer opportunities for MSFWs to redirect their lives by learning the skills and knowledge required for employment in higher skilled occupations. Usually, when farmworkers seek employment assistance from an MSFW grantee, they are trying to abandon seasonal farmwork (but not necessarily all agricultural employment) with its inherent uncertainty, poverty and other hardships. Helping farmworkers to overcome the barriers they face when seeking to attain better employment may require the concurrent provision of intensive and training services.

4. *Objective Assessment and Individual Employment Plan:* These two case management instruments may be utilized for participants seeking services beyond core services, and provide the means to achieve a sustained customer focus. The description of objective assessment is covered at § 669.380. The description of objective assessment is provided to clarify the range of resources available and to suggest that assessment should be an ongoing process. Customer focus is maintained through the use of an individual employment plan (IEP), a tool to identify the intensive services, training, and support services necessary to lead to economic self-sufficiency. The most important aspects of the IEP are that it is jointly developed between the customer and the service provider and that it should be continuously relied upon to guide the participant's participation to a successful conclusion. The IEP is a record of the participant's employment, training, and supportive services needs, and a mutually developed strategy for reaching the participant's goals. Regulatory guidance is necessary to ensure that the minimum standards expected by ETA and the grantee community, are understood and achieved in developing and maintaining IEP's for MSFW's.

5. *Training Services:* In addition to the training services authorized under section 134(d)(4)(D) and section 167(d) of the Act, experience has shown that additional training services, such as training in housing development assistance or workplace safety, are occasionally required to assist farmworker customers. Section 669.410 authorizes MSFW grantees to provide such services. Section 669.420 also regulates the minimum requirements for OJT contracts under the MSFW program.

Subpart D—Performance Accountability, Planning and Waiver Authority

This subpart addresses program administration, consultation with grantees and awarding of grants.

1. *Performance Standards and Measures:* Section 669.500 provides that the core performance indicators applicable to the formula programs under title I will also apply to the MSFW program. This section also authorizes the MSFW program to develop performance measures that are in addition to the core indicators of performance. The levels of performance for each indicator will take into account the characteristics of the participants to be served and the economic conditions in the area served by the grantee and negotiated as part of the grantee plan approval.

2. *Funding and Planning Documents:* Sections 669.510 through 669.540 describe the grant planning process. To reduce administrative effort at both the Federal and grantee levels, § 668.510 requires that the plans submitted cover a two-year (biennial) period even though funding is available on an annual basis. This represents a change from past requirements for single year plans and affords an opportunity for strategic planning and continuous improvement. Section 669.520 establishes the minimum requirement for the MSFW grant plan. Other requirements may be added by the Solicitation for Grant Application (SGA) for any given biennial period.

3. *Unilateral Modifications:* Section 669.540 authorizes the Department to unilaterally increase or reduce grant funding levels in response to Congressional action. The section also establishes the limitations under which grantees may unilaterally modify grant

plans and provide authority for bilateral modifications.

4. *Cost Classification and Reporting:* Section 669.550 describes cost classification and reporting procedures and addresses compliance with the administrative cost limitations.

5. *Waivers:* The general waiver authority in WIA does not apply to the MSFW program. However, waiver authority may prove beneficial for addressing unforseen circumstances encountered by MSFW program grantees. The regulations at §§ 669.560 and 669.570 provide MSFW program grantees with limited regulatory waiver authority to waive certain provisions of the WIA regulations.

Subpart E—The MSFW Youth Program

This subpart includes 669.600 through 669.680 which provide the introduction to the MSFW youth program by stating its purpose and its relationship to the MSFW program under section 167. Regulations at §§ 669.630 through 669.660 provide the qualifying process for receiving a MSFW youth grant.

1. *Designation of Grantees:* The section 167 MSFW youth program will be administered through grant agreements with eligible entities, selected through a competitive process. Sections 669.630 and 668.640 describe the eligibility criteria for designation and the process by which an entity may apply for designation as a MSFW youth program grantee. To be designated, an organization must submit a youth program plan in response to the Departments's Solicitation for Grant Applications. MSFW grantees expressed concern that a separate competition for youth grants would lead to instances where two different MSFW grantees were operating in the same areas. To respond to this concern, MSFW grantees operating within the same service area will be afforded special consideration in the grant competition.

2. *Allocation of Funds:* Section 669.650 regulates the funding of the MSFW youth program on a competitive basis by providing that the allocation of funds will be based on the merits of the proposal. In addition, the process may utilize allocation methods that promote a geographical distribution of funds that supports a balanced funding of both large and small scale competitive applications. The grantees also expressed concern that a larger jurisdictions would have a competitive advantage. To allay concerns over the potential for irregular distributions among jurisdictions and grantees due to relative differences in size, the regulations provide that the Department will use a means for geographical distribution that promotes acceptance of both large and small scale applications under the competition.

3. *Grant Plans:* Section 669.660 describes the planning documents required in an applicant's response to the Department's SGA and the applicable submission dates, respectively.

4. *Eligibility:* Section 669.670 establishes the eligibility criteria for farmworker youth who wish to participate in the MSFW youth program. They are youth age 14 through 21, who are economically disadvantaged.

5. *Allowable Activities and Services:* Section 669.680 authorizes the MSFW youth program activities. Specific activities are authorized by references to sections of the WIA and by described youth activities.

Part 670—Job Corps

Introduction

This part provides regulations for the Job Corps program, authorized in title I, subtitle C of WIA. The regulations address the scope and purpose of the Job Corps program and provide requirements relating to selection of sites for Job Corps centers; selection and funding of service providers; screening, selection and assignment of eligible youth to Job Corps centers; operation of Job Corps centers; and required services for Job Corps students. This part also provides regulations covering new WIA requirements such as the establishment of a business and community liaison and an industry council for each Job Corps center, and the focus on accountability, including specific performance measures for Job Corps centers and service providers. The Department's intent in these regulations is to incorporate the requirements of title I, subtitle C of the Act, and to describe the programs and services which must be available for Job Corps students, as well as the requirements dictated by the unique residential environment of a Job Corps center (such as provision of meals, transportation, recreational activities and related services).

Subpart A—Scope and Purpose

1. *Purpose:* This subpart indicates that part 670 contains regulatory provisions that apply to the Job Corps program, describes the purpose of the program, and provides definitions. It also specifies that the Job Corps Director is delegated authority to carry out the responsibilities of the Secretary under title I, subtitle C of the Act related to the operation of the Job Corps program, and that references in this part referring to ''guidelines'' or ''procedures issued by the Secretary'' mean that the Job Corps Director will issue such guidelines. Procedures guiding day-to-day operations are provided in a Policy and Requirements Handbook (PRH). The PRH includes minimum program requirements and expected outcomes for specific program components, such as education and training, student support, and administration. In addition, general guidance and best practices are provided for in a number of program areas in Job Corps Technical Assistance Guides issued by the Job Corps Director.

2. *Partnership:* The program purpose incorporates the Act's intent that Job Corps will operate as a national, residential program in partnership with States and local communities. The partnership theme is carried throughout various sections of part 670 in requirements for Job Corps centers and service providers to serve on local youth councils, to operate as a One-Stop partner, and to work with employers.

Several parties noted that the regulations provide in this subpart that Job Corps is a national program which operates in partnership with States, communities, Local Boards, youth councils, One-Stop centers and partners, and other youth programs, but argued that the earlier proposed language relating to partnership with One-Stop was not strong enough in other statements indicating services (such as outreach/admissions and placement) would be provided by One-Stop centers or partners to the extent practicable. The intent in using language such as ''to the extent practicable'' or ''to the fullest extent possible'' is not to limit or discourage the development of linkages between Job Corps and One-Stop, but to recognize (1) the language in section 145(a)(3) of the Act which requires the Secretary to conduct outreach and screening activities ''to the extent practicable'' through arrangements with applicable One-Stop centers, community action agencies, business organizations, labor organizations, and entities that have contact with youth; (2) the requirements in section 147 of the Act for selection of Job Corps center operators and other service providers (such as outreach/admissions, placement, and provision of continued services) on a competitive basis in accordance with Federal procurement law and regulations; and (3) the language in section 148(e) and section 149(b) of the Act which requires the Secretary to give priority to ''One-Stop partners'' in selecting a provider for continued services for graduates and to ''utilize One-Stop delivery systems to

the fullest extent possible'' for the placement of graduates into jobs. The use of these phrases should not be interpreted as a limitation, but as a statement of intent to enter into partnerships in all situations where it is feasible to do so.

Subpart B—Site Selection and Protection and Maintenance of Facilities

This subpart describes how sites for Job Corps centers are selected, the handling of capital improvements and new construction on Job Corps centers, and responsibilities for facility protection and maintenance. The requirements in this subpart are not significantly different from the corresponding requirements in the JTPA Job Corps regulations.

Subpart C—Funding and Selection of Service Providers

This subpart describes entities which are eligible to receive funds to operate Job Corps centers and to provide operational support services. It also describes how contract center operators and operational support service contractors are selected, emphasizing the requirements for competitive contract awards. New requirements, including consultation with the appropriate Governor, center industry council, and Local Board in development of requests for proposals for center operators, are included in § 670.310(a). In addition, § 670.310(c), describes requirements to be included in center requests for proposals to assess providers' past performance as well as their ability to coordinate Job Corps center activities with State and local activities (including One-Stop centers), and to provide vocational training that reflects employment opportunities in areas where students will seek jobs. These requirements are described in section 147(a)(2)(B) of the Act.

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

1. This subpart describes who is eligible for Job Corps under WIA and provides additional factors which are considered in selecting an eligible applicant for enrollment. This subpart also discusses who will conduct outreach and admissions activities for the Job Corps, and the responsibilities of those organizations. Section 670.450 describes the new requirements of section 145(c) of WIA for an assignment plan for Job Corps centers. Assignment plans will be developed and used to establish a target for each Job Corps center for the percentage of students enrolled who will come from the State or Department of Labor region in which the center is located, and the regions surrounding the center. In addition, this subpart addresses the requirement of section 145(d) of the Act that students must be assigned to centers closest to their homes, with consideration given to the special needs of applicants or their parents or guardians when making assignments.

Subpart E—Program Activities and Center Operations

1. *Program Activities:* This subpart describes the services and types of training each Job Corps center must provide, as well as center responsibilities in the administration of work-based learning. This subpart also describes the residential support services Job Corps centers must provide, and centers' responsibility for student accountability. Required residential support services include providing a safe, secure environment, an ongoing counseling program, food service, access to medical care, recreation, and leadership programs for students. In addition, centers must account for the whereabouts, participation, and status of students while they are enrolled in Job Corps.

2. *Behavior Management and Zero Tolerance for Violence and Drugs:* This subpart establishes requirements for Job Corps centers to have student behavior management systems. Section 670.540 describes Job Corps' zero tolerance policy for violence, drugs, and unauthorized goods. The regulatory language in this section continues current requirements for automatic dismissal of students who commit specific offenses (the one strike and you're out policy) specified in Job Corps' zero tolerance policy. The Secretary will issue procedures which continue this practice. Section 670.540 also addresses the requirements of section 145(a)(2) of the Act for drug testing of all students. This subpart also contains requirements to ensure students are provided due process in disciplinary actions. This process will include center fact-finding and review boards, and appeal procedures.

3. *Experimental, Research, and Demonstration Projects:* This subpart also addresses the authorization, provided in section 156 of the Act, for experimental, research and demonstration projects related to the Job Corps program.

Subpart F—Student Support

This subpart includes authorization of leave for students from center activities, and provisions of cash allowances and bonuses, and clothing for students. In addition to being eligible to receive transportation, students are eligible for other benefits, including basic living allowances to cover personal expenses, such as toiletries, snacks, etc., in accordance with guidance issued by the Secretary. The allowance and bonus system is structured to provide incentives for specific accomplishments of students, such as vocational completion. Students are also provided with a modest clothing allowance to enable them to obtain clothes that are appropriate for class and for the workplace.

Subpart G—Placement and Continued Services

1. *Placement Services:* This subpart discusses placement services for graduates of the Job Corps program in accordance with section 149 of the Act. The regulation focuses on graduates, which is a significant change from previous Job Corps policy and practice, since placement services have traditionally been provided for all students who leave Job Corps, no matter how long they were enrolled or how much of the program they completed. The regulatory language in this subpart is substantially different from what is contained in the JTPA Job Corps regulations to reflect the emphasis in title I, subtitle C on provision of services for graduates. The authority provided in section 149(d) of the Act, to allow for placement of former students (non-graduates), is reflected in § 670.710, but placement services are not required for anyone other than graduates. The ability to provide placement services for former students as well as for graduates will be contingent on having the funding resources to do so. It is, therefore, likely that the level of placement services for graduates and for former enrollees will differ. This subpart also discusses who will provide placement services, and the responsibilities of Job Corps placement agencies in placing graduates in jobs.

2. *Continued Services for Graduates:* This subpart discusses section 148(d) of the Act, which requires provision of 12 months of continued service for graduates. Sections 670.740 and 670.750 discuss this requirement and who may provide those services. Provision of continued services is a new requirement, and a new level of effort for Job Corps service providers, and will likely divert some funding resources which have been used in the past for provision of placement services for all students.

Subpart H—Community Connections

1. This subpart describes new requirements for Job Corps representatives to serve on local youth councils, as provided for in section 117(h) of the Act, for center business and community liaisons, and for center industry councils. Section 670.800(d) describes the role of center industry councils, as prescribed in section 154(b) of the Act, to analyze labor market information and identify job opportunities in areas where students will seek employment and the skills needed for those jobs, and to recommend changes in center vocational training offerings as appropriate. The intent of this subpart is to provide regulatory language to tie Job Corps centers more closely to their local communities and local employers to ensure that the vocational and other training students receive will enable them to obtain meaningful jobs in their home communities when they graduate.

Subpart I—Administrative and Management Provisions

1. *Student Benefits and Protections:* This subpart provides requirements relating to Tort Claims, Federal Employees Compensation Act (FECA) benefits for students, safety and health, and law enforcement jurisdiction on Job Corps center property.

2. *Program Accountability and Performance Indicators:* Subpart I also incorporates specific requirements relating to performance assessment and accountability contained in section 159(c) of the Act, as well as requirements for performance improvement plans, as provided for in section 159(f)(2), for Job Corps center operators or other service providers who fail to meet expected levels of performance. Sections 670.975 and 670.980 describe how performance of the Job Corps program will be assessed and the required indicators of performance. Indicators of performance include placement rates of graduates in jobs, including jobs related to vocational training received, average wage at placement and six and twelve months after job entry, retention in employment six and twelve months after job entry, the number of graduates who achieved job readiness and employment skills, and the number who entered postsecondary or advanced training programs.

3. *Financial and Audit Responsibilities:* This subpart also discusses financial management responsibilities of Job Corps center operators and other Job Corps service providers, as well as Federal audit requirements.

4. *Disclosure of Information and Resolution of Complaints:* This subpart includes requirements relating to student records and disclosure of information about Job Corps students; and procedures for resolution of complaints and disputes of students and other parties by center operators and service providers.

Part 671—National Emergency Grants for Dislocated Workers

Introduction

Section 170 of WIA provides for technical assistance, and section 171 provides for demonstration, pilot, multiservice, research and multistate projects. Although the Department has not regulated on these sections, it is important to note these activities for the general workforce investment system.

Section 170(a) provides that the Secretary will provide, coordinate and support the development of training, technical assistance, staff development and other activities to States and localities, and in particular, to assist States in making transitions from carrying out JTPA to carrying out activities under title I of WIA.

Section 170(b) provides for a portion of the funds reserved by the Secretary under WIA section 132(a)(2) to be used to: (1) Assist States that do not meet the State performance measures for dislocated workers; (2) assist other States, local areas and other entities involved in providing assistance for dislocated workers and to promote continuous improvement to dislocated workers under title I of WIA; or (3) assist staff who provide rapid response services, including training of those staff regarding proven methods of promoting, establishing and assisting labor-management or transition committees to plan for effective adjustment assistance for workers impacted by dislocation events.

Section 171(a), (b), and (c) of WIA describe employment and training projects which may be funded as well as the processes for such funding. Section 171(d) provides for dislocated worker demonstration projects and pilot projects, multiservice and multistate projects. The purpose of dislocated worker demonstration projects is to test innovative approaches that address priorities established by the Secretary, are consistent with the goals described in WIA, and subsequently may prove beneficial in providing adjustment assistance to larger dislocated worker populations. Generally, projects will be funded as a result of competitive solicitations published in the **Federal Register**, however, the Secretary may negotiate and fund projects other than through such solicitations.

Part 671 describes the availability of a portion of the funds reserved by the Secretary under WIA section 132(a)(2)(A) for assistance to dislocated workers.

1. *National Emergency Grants:* Part 671 contains limited regulations regarding dislocated worker funds reserved for national emergency grants. Section 173 of WIA authorizes the Secretary to award discretionary funds to serve dislocated workers in certain situations. These regulations describe circumstances under which funds may be available, including to provide employment and training assistance to workers affected by major economic dislocations (such as plant closures, mass layoffs, closures or realignments of military installations, dislocations due to federal policies, etc.); and to provide assistance to Governors of States when FEMA has determined that a major disaster, as defined in the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122 (1) and (2)), has occurred in the area.

These regulations emphasize the importance of rapid response assistance for the development of requests for national emergency funds. The Department sets a high priority on the early collection of information regarding workers being laid off, receiving requests for funds when there are insufficient State and local dislocated formula funds available to meet the needs of workers being laid off—to ensure that there are funds available in the local area when the workers first need the assistance. Early intervention to assist workers being dislocated is critical to enable them to find or qualify for new jobs as soon as possible after the dislocation occurs. While these regulations highlight some of the key elements and requirements for applying for national emergency funds, guidelines to apply for national emergency funds will be published separately in the **Federal Register**.

Part 652—Establishment and Functioning of State Employment Services

Introduction

This part implements the amendments to the Wagner-Peyser Act (the Act) made by WIA. The WIA amendments add regulations at 20 CFR part 652, subpart C and make technical changes to subpart A.

Subpart A—Employment Service Planning and Operations

In subpart A, the Department removes references to JTPA, and replaces them with WIA. It also updates definitions and removes and reserves two sections. These WIA amendments to the Act are effective July 1, 1999.

A comprehensive reading of WIA shows that Congress intended to ensure a central role for the Wagner-Peyser Act State agency designated to administer funds authorized under the Act to provide job finding and placement services to job seekers, including unemployment insurance (UI) claimants, veterans, migrant and seasonal farm workers, disabled individuals, and employers in the State One-Stop delivery system. The regulations governing the operation of the basic labor exchange program have been located at 20 CFR part 652, subpart A for many years and they are well known to State agencies administering the Wagner-Peyser Act. The Workforce Investment Act changes the environment in which the existing rules are applied. It does not amend the statutory provisions underlying the rules. The Department determined that it would not be appropriate to add new rules resulting from amendments to the Wagner-Peyser Act to 20 CFR part 652, subpart A, but that it is important the new rules be linked with the existing rules. Therefore, the Department restricted amendments to the Wagner-Peyser Act regulations at 20 CFR part 652, subpart A to only those reference citations required by the Workforce Investment Act. The Department will raise no issue under 20 CFR part 652 with States solely on the basis that they operate under JTPA during PY 1999. The operations rules governing Wagner-Peyser Act services required by WIA are reflected in part 20 CFR 652, subpart C.

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

Section 652, subpart C, §§ 652.200 through 652.216, describe the requirements for the establishment and functioning of State Wagner-Peyser Act services in a One-Stop delivery system environment. The State must maintain Wagner-Peyser Act funds under the authority of the Governor as a separate funding source to ensure a statewide delivery system of public labor exchange services. These regulations specify that the Wagner-Peyser Act agency retains responsibility for, and oversight of, all Wagner-Peyser Act services provided through the One-Stop delivery system, and explain that funds allocated to States under section 7(a) must be used to deliver Wagner-Peyser Act services through the One-Stop delivery system. Each of the three tiers of labor exchange service must be available: self-service, facilitated self-help service, and staff-assisted service. Sections 652.209 and 210 strengthen the relationship between the Wagner-Peyser Act State agency and the UI agency by requiring that reemployment services be provided, commensurate with available resources and in conjunction with other One-Stop partners, to those UI claimants who are required under any Federal or State UI law to receive the services as a condition of receiving unemployment benefits. The regulations reflect the Department's interpretation of the Wagner-Peyser Act, affirmed in *State of Michigan* v. *Alexis M. Herman,* (W.D. MI, Southern Div.) to require that job finding, placement and reemployment services funded under the Act, including services to veterans, be delivered by public merit-staff employees.

The Department is issuing these regulations after carefully considering and reacting to input received from the public. The preponderance of input focused on two themes: the relationship between the Wagner-Peyser Act State Agency and the One-Stop delivery system centers, and the preservation of the merit system for public employees.

A range of suggestions were received regarding the relationship between Wagner-Peyser Act services and the One-Stop delivery system. These regulations emphasize the State Agency's role as a One-Stop partner in delivering services seamlessly to job seekers and employers as a part of the One-Stop delivery system. State agencies have flexibility to deliver labor exchange services appropriate to local needs in accordance with a Memorandum of Understanding entered into with the local workforce investment board.

Some parties responding to merit-staff issues expressed concern that merit-staff employees might potentially come under the direction of an individual who is employed by a different agency or entity. In response to this concern, the Department has written the regulations at § 652.215 and § 652.216 to emphasize the retention of merit system protections for public employees, and limit the One-Stop operator to providing guidance to employees funded under the Wagner-Peyser Act in accordance with an agreed-upon MOU.

III. Regulatory Flexibility and Regulatory Impact Analysis

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 this Interim Final Rule by consulting with a wide range of small entities, in order to identify and address 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.

The WIA Interim Final Rule implements major reforms to the nation's job training system. The WIA will provide resources to states, localities, and other entities, including small entities, to assist youth, adults, and dislocated workers in preparing for, obtaining and retaining employment. This Rule sets forth the rights, responsibilities and conditions under which state and local governments may receive grants to operate programs in local workforce investment areas with such funds. Governments in local workforce investment areas are not small governmental entities. These areas generally have a population of at least 500,000 and are intended to replace existing service areas under the Job Training Partnership Act (JTPA) which generally have a population of at least 200,000. Consequently, the Department does not foresee an adverse impact on small governmental entities. Nevertheless, the Department has consulted extensively with state and local officials and their representatives to insure that any potential effect would be minimal. These consultations included two week-long conferences in which state and local governmental participants worked in groups divided by specialized area of interest, and the participation of state and local governmental officials under the Intergovernmental Personnel Act.

The Department also provided a number of opportunities, through a variety of media, for the input of small businesses, non-profits and any other interested parties. These opportunities included 12 town hall meetings spanning the nation in ten locations,

and an interactive web site providing ETA policy and responses to questions from the public. Additionally, in order to solicit comments from the widest possible audience, ETA broadly disseminated its developing policies through the publication of a White Paper, among other documents, which were available on the Internet, published in the **Federal Register** and distributed throughout the employment and training community.

The Interim Final Rule provides significant flexibility to States and Local governments to design programs and to determine policy and spending priorities for the use of WIA grant funds. This policy-making flexibility is embodied in § 661.120. The Rule provides States and Local governments with additional flexibility to design systems that meet the specific needs of each state and local area through the general and work-flex waiver provisions at §§ 661.410 and 661.430. The Department has taken steps to further ameliorate any potential burdens through § 667.210 of the Interim Final Rule, which provides that states and localities may use a portion of their grant funds (up to five percent at the State level and up to ten percent at the local level) for management and administration of the grant, rather than for the direct provision of services to participants. Because the WIA statutory limit on administrative cost is lower than the existing JTPA limit, States and localities were also extensively consulted regarding the regulatory definition of these administrative costs to ensure that this cost category is defined as flexibly as possible. The Rule requires the reporting of costs in only two categories—program and administrative—and excludes certain information technology costs from the administrative cost category.

A portion of WIA funds is available for direct grants from the Department. ETA has consulted with representatives of the migrant and seasonal farm worker community, and Indian and Native American tribal governments to minimize any burdens that provisions of the Rule would have on those communities. The Rule provides limited authority to these grantees to receive waivers of certain provisions of the Rule, to lessen any burden on these communities.

To further ameliorate any burden on WIA direct grantees, the Rule permits direct grantees to use a portion of WIA funds for administrative costs expenditure. Unlike formula funds, the administrative cost limit for direct grantees is not specified in the Rule but will be negotiated in the grant agreement to take into account individual circumstances. Similarly, the period of availability for expenditure of grant funds is established in the grant agreement rather than set by Rule to take into account individual circumstances. Based on provisions such as these, the Department has concluded that the Rule will not place undue burdens on small entities. In addition, under to the Small Business Regulatory Fairness Act (SBREFA) (5 U.S.C. Chapter 8), the Department has determined that this Interim Final Rule is not a ''major rule,'' as defined in 5 U.S.C. 804(2). The Department certifies that this Interim Final Rule has been assessed in accordance with Pub. L. 105–227, 112 Stat. 2681, for its effect on family well-being.

IV. Executive Order 12866

Pursuant to Executive Order 12866, the Department has evaluated this 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 by statute to prescribe regulations for the WIA program within 180 days of enactment. 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, Intergovernmental Organizations, other stakeholders, and the general public). The WIA grants increase the resources available to the public and private organizations that promote long-term employment and self-sufficiency. The Department has determined the Interim Final Rule will not have an adverse effect in a material way on the nation's economy.

The Department has developed the Interim Final Rule in close consultation with the Department of Education, and with other interested Federal agencies. Based on that consultation, the Department has determined that this Interim Final Rule will not create a serious inconsistency or otherwise interfere with any action taken or planned by another Federal Agency.

This Interim Final Rule implements the Workforce Investment Act, which is the only major reform of the nation's job training and employment system in over 15 years. Consequently, this Interim Final Rule raises novel policy issues. Therefore, the Department finds it to be 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.

The Department has determined that the WIA Interim Final Rule will not mandate 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. Accordingly, the Department 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 Department has determined, in accordance with 5 U.S.C. 553(b)(3)(B), that the statutory mandate to promulgate regulations within 180 days of the enactment of the statute constitutes good cause for waiving notice and comment proceedings. Furthermore, WIA became effective upon the date of enactment, August 7, 1998. It is critical that the Department quickly issue regulations to assist States which wish to begin operating under WIA as early as possible. Congress also recognized this urgency in sec. 506(c) of the Act, by specifically authorizing the Department to issue an Interim Final Rule. Accordingly, the Department finds that the issuance of a Proposed Rule, rather than an Interim Final Rule, would be contrary to the public interest. This Interim Final Rule will become effective on May 17, 1999. The Department is committed to meeting the statutory deadline to issue a Final Rule by December 31, 1999. This Interim Final Rule sets a comment period to elicit any concerns raised by the rule for

consideration in the development of the Final Rule. The Department has provided a comment period of 90 days to provide a significant period for public input into any revisions to parts 652 and 660 through 671 for the Final Rule.

VII. Catalog of Federal Domestic Assistance Number

The program is listed in the *Catalog of Federal Domestic Assistance* at No. 17.255.

List of Subjects in 20 CFR Parts 652 and 660 through 671

Grant programs, labor, employment, job training programs.

Signed at Washington, DC, this 31st day of March 1999.

Alexis M. Herman,

Secretary of Labor.

Raymond L. Bramucci,

Assistant Secretary of Labor, Employment and Training Administration.

For the reason stated in the preamble, 20 CFR Ch. V is amended as follows:

1. Parts 660 through 671 are added and Part 652 is amended to read as follows:

PART 660—INTRODUCTION TO THE REGULATIONS FOR WORKFORCE INVESTMENT SYSTEMS UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

Sec.

Authority: Sec. 506(c), Pub. L. 105–220; 20 USC 9276(c).

§ 660.100 What is the purpose of title I of the Workforce Investment Act of 1998?

The purpose of title I of the Workforce Investment Act of 1998 (hereafter referred to as WIA) is to provide workforce investment activities that increase the employment, retention and earnings of participants, and increase occupational skill attainment by participants, which will improve the quality of the workforce, reduce welfare dependency, and enhance the productivity and competitiveness of the Nation's economy. These goals are achieved through the workforce investment system. (WIA sec. 106.)

§ 660.200 What do the regulations for workforce investment systems under title I of the Workforce Investment Act cover?

The regulations found in 20 CFR parts 660—671 set forth the regulatory requirements that are applicable to programs operated with funds provided under title I of WIA. This part 660 describes the purpose of that Act, explains the format of these regulations and sets forth definitions for terms that apply to each part. Part 661 contains regulations relating to Statewide and local governance of the workforce investment system. Part 662 describes the One-Stop system and the roles of One-Stop partners. Part 663 sets forth requirements applicable to WIA title I programs serving adults and dislocated workers. Part 664 sets forth requirements applicable to WIA title I programs serving youth. Part 665 contains regulations relating to Statewide activities. Part 666 describes the WIA title I performance accountability system. Part 667 sets forth the administrative requirements applicable to programs funded under WIA title I. Parts 668 and 669 contain the particular requirements applicable to programs serving Indians and Native Americans and Migrant and Seasonal Farmworkers, respectively. Parts 670 and 671 describe the particular requirements applicable to the Job Corps and other national programs, respectively.

§ 660.300 What definitions apply to the regulations for workforce investment systems under title I of WIA?

In addition to the definitions set forth at WIA sec. 101, the following definitions apply to the regulations set forth in 20 CFR parts 660—671:

Department or DOL means the U.S. Department of Labor, including its agencies and organizational units.

Designated region means a combination of local areas that are partly or completely in a single labor market area, economic development region, or other appropriate contiguous subarea of a State, that is designated by the State under WIA section 116(c), or a similar interstate region that is designated by two or more States under WIA section 116(c)(4).

Employment and training activity means a workforce investment activity that is carried out for an adult or dislocated worker.

EEO data means data on race and ethnicity, age, sex, and disability required by regulations implementing sec. 188 of WIA governing nondiscrimination.

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

Grant means an award of WIA financial assistance by the U.S. Department of Labor to an eligible WIA recipient.

Grantee means the direct recipient of grant funds from the Department of Labor. A grantee may also be referred to as a recipient.

Literacy means an individual's ability to read, write, and speak in English, and to compute, and solve problems, at levels of proficiency necessary to function on the job, in the family of the individual, and in society.

Local Board means a local workforce investment board established under WIA sec. 117, to set policy for the local workforce investment system.

Outlying area means the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

Participant means an individual who has registered under 20 CFR 663.105 or 20 CFR 664.215 and has been determined to be eligible to participate in and who is receiving services (except for follow up services) under a program authorized by WIA title I. Participation commences on the first day, following determination of eligibility, on which the individual begins receiving core, intensive, training or other services provided under WIA title I.

Recipient means an entity to which a WIA grant is awarded directly from the Department of Labor to carry out a program under title I of WIA. The State is the recipient of funds awarded under WIA secs. 127(b)(1)(C)(i)(II), 132(b)(1)(B) and 132(b)(2)(B).

Register means the process for collecting information to determine an individual's eligibility for services under WIA title I. Individuals may be registered in a variety ways, as described in 20 CFR 663.105 and 20 CFR 664.215.

Secretary means the Secretary of the U.S. Department of Labor.

Self certification means an individual's signed attestation that the information he/she submits to demonstrate eligibility for a program under title I of WIA is true and accurate.

State Board means a State workforce investment board established under WIA sec. 111.

State means each of the several States of the United States, the District of Columbia and the Commonwealth of Puerto Rico. The term ''State'' does not include outlying areas.

Subrecipient means an entity to which a subgrant is awarded and which is accountable to the recipient (or higher tier subrecipient) for the use of the funds provided.

Vendor means an entity responsible for providing generally required goods or services to be used in the WIA

program. These goods or services may be for the recipient's or subrecipient's own use or for the use of participants in the program.

Wagner-Peyser Act means the Act of June 6, 1933, as amended, codified at 29 U.S.C. 49 *et seq.*

Workforce investment activities mean the array of activities permitted under title I of WIA, which include employment and training activities for adults and dislocated workers, as described in WIA section 134, and youth activities, as described in WIA section 129.

Youth activity means a workforce investment activity that is carried out for youth.

PART 661—STATEWIDE AND LOCAL GOVERNANCE OF THE WORKFORCE INVESTMENT SYSTEM UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

Subpart A—General Governance Provisions

Subpart B—State Governance Provisions

Subpart C—Local Governance Provisions

Subpart D—Waivers and Work-Flex

Authority: Sec. 506(c), Pub. L. 105–220; 20 U.S.C. 9276(c).

Subpart A—General Governance Provisions

§ 661.100 What is the workforce investment system?

Under title I of WIA, the workforce investment system provides the framework for delivery of workforce investment activities at the State and local levels to individuals who need those services, including job seekers, dislocated workers, youth, incumbent workers, new entrants to the workforce, veterans, persons with disabilities, and employers. Each State's Governor is required, in accordance with the requirements of this Part, to establish a State Board; to designate local workforce investment areas; and to oversee the creation of Local Boards and One-Stop service delivery systems in the State.

§ 661.110 What is the role of the Department of Labor as the Federal governmental partner in the governance of the workforce investment system?

(a) Successful governance of the workforce investment system will be achieved through cooperation and coordination of Federal, State and local governments.

(b) The Department of Labor sees as one of its primary roles providing leadership and guidance to support a system that meets the objectives of title I of WIA, and in which State and local partners have flexibility to design systems and deliver services in a manner designed to best achieve the goals of WIA based on their particular needs. These regulations provide the framework in which State and local officials can exercise such flexibility within the confines of the statutory requirements. Wherever possible, system features such as design options and categories of services are not narrowly defined, and are subject to State and local interpretation.

(c) The Secretary, in consultation with other Federal Agencies, as appropriate, may publish guidance on interpretations of statutory and regulatory provisions. State and local policies, interpretations, guidelines and definitions that are consistent with interpretations contained in such guidance will be considered to be consistent with the Act for purposes of § 661.120 of this subpart.

§ 661.120 What are the roles of the local and State governmental partner in the governance of the workforce investment system?

(a) Local Boards should establish policies, interpretations, guidelines and definitions to implement provisions of title I of WIA to the extent that such policies, interpretations, guidelines and definitions are not inconsistent with the Act or the regulations or with State policies.

(b) State Boards should establish policies, interpretations, guidelines and definitions to implement provisions of title I of WIA to the extent that such policies, interpretations, guidelines and definitions are not inconsistent with the Act and regulations.

Subpart B—State Governance Provisions

§ 661.200 What is the State Workforce Investment Board?

(a) The State Board is a board established by the Governor in accordance with the requirements of WIA section 111 and this section.

(b) The membership of the State Board must meet the requirements of WIA section 111(b). The State Board must contain two or more members representing the categories described in WIA sections 111(b)(1)(C)(iii)–(v), and special consideration must be given to chief executive officers of community colleges and community based organizations in the selection of members representing the entities identified in WIA section 111(b)(1)(C)(v).

(c) The Governor may appoint any other representatives or agency officials, such as agency officials responsible for economic development and juvenile justice programs in the State.

(d) Members who represent organizations, agencies or other entities must be individuals with optimum policy making authority within the entities they represent.

(e) A majority of members of the State Board must be representatives of business. Members who represent business must be individuals who are owners, chief executive officers, chief operating officers, or other individuals with optimum policy making or hiring authority, including members of Local Boards.

(f) The Governor must appoint the business representatives from among individuals who are nominated by State business organizations and business trade associations. The Governor must appoint the labor representatives from among individuals who are nominated by State labor federations.

(g) The Governor must select a chairperson of the State Board from the business representatives on the board.

(h) The Governor may establish terms of appointment or other conditions governing appointment or membership on the State Board.

(i) For the programs and activities carried out by one-stop partners, as described in WIA section 121(b) and 20 CFR 662.210, the State Board must include:

(1) The lead State agency officials with responsibility for such program, or

(2) In any case in which no lead State agency official has responsibility for such a program service, a representative in the State with expertise relating to such program, service or activity.

(j) The State Board must conduct its business in an open manner as required by WIA section 111(g), by making available to the public, on a regular basis through open meetings, information about the activities of the State Board, including information about the State Plan prior to submission of the plan, information about membership, and on request, minutes of formal meetings of the State Board. (WIA section 111)

§ 661.205 What is the role of the State Board?

The State Board must assist the Governor in the:

(a) Development of the State Plan;

(b) Development and continuous improvement of a Statewide system of activities that are funded under subtitle B of title I of WIA, or carried out through the One-Stop delivery system, including—

(1) Development of linkages in order to assure coordination and nonduplication among the programs and activities carried out by One-Stop partners, including, as necessary, addressing any impasse situations in the development of the local memorandum of understanding; and

(2) Review of local plans;

(c) Commenting at least once annually on the measures taken under section 113(b)(14) of the Carl D. Perkins Vocational and Technical Education Act;

(d) Designation of local workforce investment areas,

(e) Development of allocation formulas for the distribution of funds for adult employment and training activities and youth activities to local areas, as permitted under WIA sections 128(b)(3)(B) and 133(b)(3)(B);

(f) Development and continuous improvement of comprehensive State performance measures, including State adjusted levels of performance, to assess the effectiveness of the workforce investment activities in the State, as required under WIA section 136(b);

(g) Preparation of the annual report to the Secretary described in WIA section 136(d);

(h) Development of the Statewide employment statistics system described in section 15(e) of the Wagner-Peyser Act; and

(i) Development of an application for an incentive grant under WIA section 503. (WIA section 111(d).)

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

(a) The State may use any State entity that meets the requirements of WIA section 111(e) to perform the functions of the State Board.

(b) If the State uses an alternative entity, the State workforce investment plan must demonstrate that the alternative entity meets all three of the requirements of WIA section 111(e). Section 111(e) requires that such entity:

(1) Was in existence on December 31, 1997;

(2)(i) Was established under section 122 (relating to State Job Training Coordinating Councils) or title VII (relating to State Human Resource Investment Councils) of the Job Training Partnership Act (29 U.S.C. 1501 *et seq.*), as in effect on December 31, 1997, or

(ii) Is substantially similar to the State Board described in WIA section 111(a), (b), and (c) and § 661.200; and

(3) Includes, at a minimum, two or more representatives of business in the State and two or more representatives of labor organizations in the State.

(c) If the alternative entity does not provide for representative membership of each of the categories of required State Board membership under WIA section 111(b), the State Plan must explain the manner in which the State will ensure an ongoing role for any such group in the workforce investment system.

(d) If the membership structure of the alternative entity is significantly changed after December 31, 1997, the entity will no longer be eligible to perform the functions of the State Board. In such case, the Governor must establish a new State Board which meets all of the criteria of WIA section 111(b). A significant change in the membership structure does not mean the filling of a vacancy on the alternative entity, but does include any change in the organization of the alternative entity or in the categories of entities represented on the alternative entity which requires a change to the alternative entity's charter or a similar document that defines the formal organization of the alternative entity.

(e) In 20 CFR parts 660 through 671, all references to the State Board also apply to an alternative entity used by a State.

§ 661.220 What are the requirements for the submission of the State Workforce Investment Plan?

(a) The Governor of each State must submit a State Workforce Investment Plan (State Plan) in order to be eligible to receive funding under title I of WIA and the Wagner-Peyser Act. The State Plan must outline the State's five year strategy for the workforce investment system.

(b) The State Plan must be submitted in accordance with planning guidelines issued by the Secretary of Labor. The planning guidelines set forth the information necessary to document the State's vision, goals, strategies, policies and measures for the workforce investment system (that were arrived at through the collaboration of the Governor, chief elected officials, business and other parties), as well as the information required to demonstrate compliance with WIA, and the information detailed by WIA and these regulations and the Wagner-Peyser Act and the Wagner-Peyser regulations at 20 CFR part 652.

(c) The State Plan must contain a description of the State's performance accountability system, and the State performance measures in accordance with the requirements of WIA section 136 and 20 CFR part 666.

(d) The State must provide an opportunity for public comment on and input into the development of the State Plan prior to its submission. The opportunity for public comment must include an opportunity for comment by representatives of business, representatives of labor organizations, and chief elected official(s) and must be consistent with the requirement, at WIA section 111(g), that the State Board makes information regarding the State Plan and other State Board activities available to the public through regular open meetings. The State Plan must describe the State's process and timeline for ensuring a meaningful opportunity for public comment.

(e) The Secretary reviews completed plans and must approve all plans within ninety days of their submission, unless the Secretary determines in writing that:

(1) The plan is inconsistent with the provisions of title I of WIA or these regulations. For example, a finding of inconsistency would be made if the Secretary and the Governor have not reached agreement on the adjusted levels of performance under WIA section 136(b)(3)(A), or there is not an effective strategy in place to ensure development of a fully operational One-Stop delivery system in the State; or

(2) The portion of the plan describing the detailed Wagner-Peyser plan does not satisfy the criteria for approval of such plans as provided in section 8(d) of the Wagner-Peyser Act or the Wagner-Peyser regulations at 20 CFR part 652.

§ 661.230 What are the requirements for modification of the State workforce investment plan?

(a) The State may submit a modification of its workforce investment plan at any time during the five-year life of the plan.

(b) Modifications are required when:

(1) Changes in Federal or State law or policy substantially change the assumptions upon which the plan is based.

(2) There are changes in the Statewide vision, strategies, policies, performance indicators, the methodology used to determine local allocation of funds, reorganizations which change the working relationship with system employees, changes in organizational responsibilities, changes to the membership structure of the State Board or alternative entity and similar substantial changes to the State's workforce investment system.

(3) The State has failed to meet performance goals, and must adjust service strategies.

(c) Modifications are required in accordance with the Wagner-Peyser provisions at 20 CFR 652.210.

(d) Modifications to the State Plan are subject to the same public review and comment requirements that apply to the development of the original State Plan.

(e) State Plan modifications will be approved by the Secretary based on the approval standard applicable to the original State Plan under § 661.220(e).

§ 661.240 How do the unified planning requirements apply to the five-year strategic WIA and Wagner-Peyser plan and to other Department of Labor plans?

(a) A State may submit to the Secretary a unified plan for any of the programs or activities described in WIA section 501(b)(2). This includes the following DOL programs and activities:

(1) The five-year strategic WIA and Wagner-Peyser plan;

(2) Trade adjustment assistance activities and NAFTA—TAA;

(3) Veterans' programs under 38 U.S.C. Chapter 41;

(4) Programs authorized under State unemployment compensation laws;

(5) Welfare-to-Work (WtW) programs; and

(6) Senior Community Service Employment Programs under title V of the Older Americans Act.

(b) For purposes of paragraph (a) of this section, a State may submit, as part of the unified plan, any plan, application form or any other similar document, that is required as a condition for the approval of Federal funding under the applicable program. These plans include such things as the WIA plan, or the WtW plan. They do not include jointly executed funding instruments, such as grant agreements, or Governor/Secretary Agreements or items such as corrective actions plans.

(c) A State which submits a unified plan under paragraph (a) of this section will not be required to submit additional planning materials as a condition for approval to receive Federal funds.

(d) Each portion of a unified plan submitted under paragraph (a) of this section is subject to the particular requirements of Federal law authorizing the program. All grantees are still subject to such things as reporting and record-keeping requirements, corrective action plan requirements and other generally applicable requirements.

(e) A unified plan must contain the information required by WIA section 501(c) and will be approved in accordance with the requirements of WIA section 501(d).

§ 661.250 What are the requirements for designation of local workforce investment areas?

(a) The Governor must designate local workforce investment areas in order for the State to receive funding under title I of WIA.

(b) The Governor must take into consideration the factors described in WIA section 116(a)(1)(B) in making designations of local areas. Such designation must be made in consultation with the State Board, and after consultation with chief elected officials. The Governor must also consider comments received through the public comment process described in the State workforce investment plan under § 661.220(d).

(c) The Governor may approve a request for designation as a workforce investment area from any unit of general local government, including a combination of such units, if the State Board determines that the area meets the requirements of WIA section 116(a)(1)(B) and recommends designation. (WIA section 116.)

§ 661.260 What are the requirements for automatic designation of workforce investment areas relating to units of local government with a population of 500,000 or more?

The requirements for automatic designation relating to units of local government with a population of 500,000 or more and to rural concentrated employment programs are contained in WIA section 116(a)(2).

§ 661.270 What are the requirements for temporary and subsequent designation of workforce investment areas relating to areas that had been designated as service delivery areas under JTPA?

The requirements for temporary and subsequent designation relating to areas that had been designated as service

delivery areas under JTPA are contained in WIA section 116(a)(3).

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

(a) A unit of local government (or combination of units) or a rural concentrated employment program grant recipient (as described at WIA section 116(a)(2)(B), which has requested but has been denied its request for designation as a workforce investment area under §§ 661.260–661.270, may appeal the decision to the State Board, in accordance with appeal procedures established in the State Plan.

(b) If a decision on the appeal is not rendered in a timely manner or if the appeal to the State Board does not result in designation, the entity may request review by the Secretary of Labor, under the procedures set forth at 20 CFR 667.640(a).

(c) The Secretary may require that the area be designated as a workforce investment area, if the Secretary determines that:

(1) The entity was not accorded procedural rights under the State appeals process; or

(2) The area meets the automatic designation requirements at WIA section 116(a)(2) or the temporary and subsequent designation requirements at WIA section 116(a)(3), as appropriate.

§ 661.290 Under what circumstances may States require Local Boards to take part in regional planning activities?

(a) The State may require Local Boards within a designated region (as defined at 20 CFR 660.300) to:

(1) Participate in a regional planning process that results in regional performance measures for workforce investment activities under title I of WIA. Regions that meet or exceed the regional performance measures may receive regional incentive grants;

(2) Share, where feasible, employment and other types of information that will assist in improving the performance of all local areas in the designated region on local performance measures; and

(3) Coordinate the provision of WIA title I services, including supportive services such as transportation, across the boundaries of local areas within the designated region.

(b) Two or more States may designate a labor market area, economic development region, or other appropriate contiguous subarea of the States as an interstate region. In such cases, the States may jointly exercise the State's functions described in this section.

(c) Designation of intrastate regions and interstate regions and their corresponding performance measures must be described in the respective State Plan(s). For interstate regions, the roles of the respective governors, State Boards and Local Boards must be described in the respective State Plans.

(d) Unless agreed to by all affected chief elected officials and the Governor, these regional planning activities may not substitute for or replace the requirements applicable to each local area under other provisions of the WIA. (WIA section 116(a).)

Subpart C—Local Governance Provisions

§ 661.300 What is the Local Workforce Investment Board?

(a) The Local Workforce Investment Board (Local Board) is appointed by the chief elected official in each local area in accordance with State criteria established under WIA section 117(b), and is certified by the Governor every two years, in accordance with WIA section 117(c)(2).

(b) In partnership with the chief elected official(s), the Local Board sets policy for the portion of the Statewide workforce investment system within the local area.

(c) The Local Board and the chief elected official(s) may enter into an agreement that describes the respective roles and responsibilities of the parties.

(d) The Local Board, in partnership with the chief elected official, develops the local workforce investment plan and performs the functions described in WIA section 117(d). (WIA section 117 (d).)

(e) In the case in which a local area includes more than one unit of general local government in accordance with WIA section 117 (c)(1)(B), the chief elected officials of such units may execute an agreement to describe their responsibilities for carrying out the roles and responsibilities. If, after a reasonable effort, the chief elected officials are unable to reach agreement, the Governor may appoint the members of the local board from individuals nominated or recommended as specified in WIA section 117(b).

(f) In the case in which the State Plan indicates that the State will be treated as a local area under WIA title I, the Governor may designate the State Board to carry out any of the roles of the Local Board.

§ 661.305 What is the role of the Local Workforce Investment Board?

(a) WIA section 117(d) specifies that the Local Board is responsible for:

(1) Developing the five-year local workforce investment plan (Local Plan) and conducting oversight of the One-Stop system, youth activities and employment and training activities under title I of WIA, in partnership with the chief elected official;

(2) Selecting One-Stop operators with the agreement of the chief elected official;

(3) Selecting eligible youth service providers based on the recommendations of the youth council, and identifying eligible providers of adult and dislocated worker intensive services and training services, and maintaining a list of eligible providers with performance and cost information, as required in 20 CFR part 663, subpart E;

(4) Developing a budget for the purpose of carrying out the duties of the Local Board, subject to the approval of the chief elected official;

(5) Negotiating and reaching agreement on local performance measures with the chief elected official and the Governor;

(6) Assisting the Governor in developing the Statewide employment statistics system under the Wagner-Peyser Act;

(7) Coordinating workforce investment activities with economic development strategies and developing employer linkages; and

(8) Promoting private sector involvement in the Statewide workforce investment system through effective connecting, brokering, and coaching activities through intermediaries such as the One-Stop operator in the local area or through other organizations, to assist employers in meeting hiring needs.

(b) The Local Board, in cooperation with the chief elected official, appoints a youth council as a subgroup of the Local Board and coordinates workforce and youth plans and activities with the youth council, in accordance with WIA sec. 117(h) and § 661.335.

(c) Local Boards which are part of a State designated region for regional planning must carry out the regional planning responsibilities required by the State in accordance with WIA section 116(c) and § 661.290.

(d) The Local Board must conduct business in an open manner as required by WIA section 117(e), by making available to the public, on a regular basis through open meetings, information about the activities of the Local Board, including information about the local plan before submission of the plan, and about membership, the designation and certification of One-Stop operators, and the award of grants or contracts to eligible providers of

youth activities, and on request, minutes of formal meetings of the Local Board. (WIA sec. 117.)

§ 661.310 Under what limited conditions may a Local Board directly be a provider of core services, intensive services, or training services, or act as a One-Stop Operator?

(a) A Local Board may not directly provide core services, or intensive services, or be designated or certified as a One-Stop operator, unless agreed to by the chief elected official and the Governor.

(b) A Local Board is prohibited from providing training services, unless the Governor grants a waiver in accordance with the provisions in WIA section 117(f)(1). The waiver shall apply for not more than one year and may be renewed for not more than one additional year.

(c) The restrictions on the provision of core, intensive, and training services by the Local Board, and designation or certification as One-Stop operator, also apply to staff of the Local Board. (WIA sec. 117(f)(1) and (f)(2).)

§ 661.315 Who are the required members of the Local Workforce Investment Boards?

(a) The membership of Local Board must be selected in accordance with criteria established under WIA section 117(b)(1) and must meet the requirements of WIA section 117(b)(2). The Local Board must contain two or more members representing the categories described in WIA section 117(b)(2)(A)(ii)–(v), and special consideration must be given to the entities identified in WIA section 117(b)(2)(A)(ii), (iv) and (v) in the selection of members representing those categories. The Local Board must contain at least one member representing each One-Stop partner.

(b) The membership of Local Boards may include individuals or representatives of other appropriate entities, including entities representing individuals with multiple barriers to employment and other special populations, as determined by the chief elected official.

(c) Members who represent organizations, agencies or other entities must be individuals with optimum policy making authority within the entities they represent.

(d) A majority of the members of the Local Board must be representatives of business in the local area. Members representing business must be individuals who are owners, chief executive officers, chief operating officers, or other individuals with optimum policymaking or hiring authority. Business representatives serving on Local Boards may also serve on the State Board.

(e) Chief elected officials must appoint the business representatives from among individuals who are nominated by local business organizations and business trade associations. Chief elected officials must appoint the labor representatives from among individuals who are nominated by local labor federations (or, for a local area in which no employees are represented by such organizations, other representatives of employees). (WIA sec. 117(b).)

§ 661.320 Who must chair a Local Board?

The Local Board must elect a chairperson from among the business representatives on the board. (WIA sec. 117(b)(5).)

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

The Local Board is appointed by the chief elected official(s) in the local area in accordance with State criteria established under WIA section 117(b), and is certified by the Governor every two years, in accordance with WIA section 117(c)(2). The criteria for certification must be described in the State Plan. (WIA sec. 117(c).)

§ 661.330 Under what circumstances may the State use an alternative entity as the local workforce investment board?

(a) The State may use any local entity that meets the requirements of WIA section 117(i) to perform the functions of the Local Board. WIA section 117(i) requires that such entity:

(1) Was established to serve the local area (or the service delivery area that most closely corresponds to the local area);

(2) Was in existence on December 31, 1997;

(3)(i) Is a Private Industry Council established under to section 102 of the Job Training Partnership Act, as in effect on December 31, 1997; or

(ii) Is substantially similar to the Local Board described in WIA section 117 (a), (b), and (c) and (h)(1) and (2); and

(4) Includes, at a minimum, two or more representatives of business in the local area and two or more representatives of labor organizations nominated by local labor federations or employees in the local area.

(b)(1) If the Governor certifies an alternative entity to perform the functions of the Local Board; the State workforce investment plan must demonstrate that the alternative entity meets the requirements of WIA section 117(i), set forth in paragraph (a) of this section.

(2) If the alternative entity does not provide for representative membership of each of the categories of required Local Board membership under WIA section 117(b), the local workforce investment plan must explain the manner in which the Local Board will ensure an ongoing role for any such group in the local workforce investment system.

(c) If the membership structure of an alternative entity is significantly changed after December 31, 1997, the entity will no longer be eligible to perform the functions of the Local Board. In such case, the chief elected official(s) must establish a new Local Board which meets all of the criteria of WIA section 117(a), (b), and (c) and (h)(1) and (2). A significant change in the membership structure does not mean the filling of a vacancy on the alternative entity, but does include any change in the organization of the alternative entity or in the categories of entities represented on the alternative entity that requires a change to the alternative entity's charter or a similar document that defines the formal organization of the alternative entity.

(d) In these regulations, all references to the Local Board must be deemed to also apply to an alternative entity used by a local area. (WIA sec. 117(i).)

§ 661.335 What is a youth council, and what is its relationship to the Local Board?

(a) A youth council must be established as a subgroup within each Local Board.

(b) The membership of each youth council must include:

(1) Members of the Local Board, such as educators, employers, and representatives of human service agencies, who have special interest or expertise in youth policy;

(2) Members who represent service agencies, such as juvenile justice and local law enforcement agencies;

(3) Members who represent local public housing authorities;

(4) Parents of eligible youth seeking assistance under subtitle B of title I of WIA;

(5) Individuals, including former participants, and members who represent organizations, that have experience relating to youth activities; and

(6) Members who represent the Job Corps, if a Job Corps Center is located in the local area represented by the council.

(c) Youth councils may include other individuals, who the chair of the Local Board, in cooperation with the chief elected official, determines to be appropriate.

(d) Members of the youth council who are not members of the Local Board must be voting members of the youth council and nonvoting members of the Local Board.

§ 661.340 What are the responsibilities of the youth council?

The youth council is responsible for:

(a) Coordinating youth activities in a local area;

(b) Developing portions of the local plan related to eligible youth, as determined by the chairperson of the Local Board;

(c) Recommending eligible youth service providers in accordance with WIA section 123, subject to the approval of the Local Board;

(d) Conducting oversight with respect to eligible providers of youth activities in the local area, subject to the approval of the Local Board; and

(e) Carrying out other duties, as authorized by the chairperson of the Local Board, such as establishing linkages with educational agencies and other youth entities.

§ 661.345 What are the requirements for the submission of the local workforce investment plan?

(a) WIA section 118 requires that each Local Board, in partnership with the appropriate chief elected officials, develops and submits a comprehensive five-year plan to the Governor which identifies and describes certain policies, procedures and local activities that are carried out in the local area, and that is consistent with the State Plan.

(b) The Local Board must provide an opportunity for public comment on and input into the development of the local workforce investment plan prior to its submission, and the opportunity for public comment on the local plan must:

(1) Make copies of the proposed local plan available to the public (through such means as public hearings and local news media);

(2) Include an opportunity for comment by members of the Local Board and members of the public, including representatives of business and labor organizations;

(3) Provide at least a thirty (30) day period for comment, beginning on the date on which the proposed plan is made available, prior to its submission to the Governor; and

(4) Be consistent with the requirement, in WIA section 117(e), that the Local Board make information about the plan available to the public on a regular basis through open meetings.

(c) The Local Board must submit any comments that express disagreement with the plan to the Governor along with the plan.

§ 661.350 What are the contents of the local workforce investment plan?

(a) The local workforce investment plan must meet the requirements of WIA section 118(b). The plan must include:

(1) An identification of the workforce investment needs of businesses, job-seekers, and workers in the local area;

(2) An identification of current and projected employment opportunities and job skills necessary to obtain such opportunities;

(3) A description of the One-Stop delivery system to be established or designated in the local area, including:

(i) How the Local Board will ensure continuous improvement of eligible providers of services and ensure that such providers meet the employment needs of local employers and participants; and

(ii) A copy of the local memorandum(s) of understanding between the Local Board and each of the One-Stop partners concerning the operation of the local One-Stop delivery system;

(4) A description of the local levels of performance negotiated with the Governor and the chief elected official(s) to be used by the Local Board for measuring the performance of the local fiscal agent (where appropriate), eligible providers, and the local One-Stop delivery system;

(5) A description and assessment of the type and availability of adult and dislocated worker employment and training activities in the local area, including a description of the local ITA system and the procedures for ensuring that exceptions to the use of ITA's, if any, are justified under WIA section 134(d)(4)(G)(ii) and 20 CFR 663.430;

(6) A description of how the Local Board will coordinate local activities with Statewide rapid response activities;

(7) A description and assessment of the type and availability of youth activities in the local area, including an identification of successful providers of such activities;

(8) A description of the process used by the Local Board to provide opportunity for public comment, including comment by representatives of business and labor organizations, and input into the development of the local plan, prior to the submission of the plan;

(9) An identification of the fiscal agent, or entity responsible for the disbursal of grant funds;

(10) A description of the competitive process to be used to award grants and contracts for activities carried out under this subtitle I of WIA, including the process to be used to procure training services that are made as exceptions to the Individual Training Account process (WIA sec. 134(d)(4)(G)),

(11) A description of the criteria to be used by the Governor and the Local Board, under 20 CFR 663.600, to determine whether funds allocated to a local area for adult employment and training activities under WIA sections 133(b)(2)(A) or (3) are limited, and the process by which any priority will be applied by the One-Stop operator;

(12) In cases where an alternate entity functions as the Local Board, the information required at § 661.330(b), and

(13) Such other information as the Governor may require.

(b) The Governor must review completed plans and must approve all such plans within ninety days of their submission, unless the Governor determines in writing that:

(1) There are deficiencies identified in local workforce investment activities carried out under this subtitle that have not been sufficiently addressed; or

(2) The plan does not comply with title I of WIA and these regulations, including the required consultations and public comment provisions.

(c) In cases where the State is a single local area:

(1) The Secretary performs the roles assigned to the Governor as they relate to local planning activities.

(2) The Secretary issues planning guidance for such States.

(3) The requirements found in WIA and in these regulations for consultation with chief elected officials apply to the development of State and local plans and to the development and operation of the One-Stop delivery system.

§ 661.355 When must a local plan be modified?

The Governor must establish procedures governing the modification of local plans. Situations in which modifications may be required by the Governor include significant changes in local economic conditions, changes in the financing available to support WIA title I and partner-provided WIA services, changes to the Local Board structure, or a need to revise strategies to meet performance goals.

Subpart D—Waivers and Work-Flex

§ 661.400 What is the purpose of the General Statutory and Regulatory Waiver Authority provided at section 189(i)(4) of the Workforce Investment Act?

(a) The purpose of the general statutory and regulatory waiver authority is to provide flexibility to States and local areas and enhance their

ability to improve the statewide workforce investment system.

(b) A waiver may be requested to address impediments to the implementation of a strategic plan, including the continuous improvement strategy, consistent with the key reform principles of WIA. These key reform principles include:

(1) Streamlining services and information to participants through a One-Stop delivery system;

(2) Empowering individuals to obtain needed services and information to enhance their employment opportunities;

(3) Ensuring universal access to core employment-related services;

(4) Increasing accountability of States, localities and training providers for performance outcomes;

(5) Establishing a stronger role for Local Boards and the private sector;

(6) Providing increased State and local flexibility to implement innovative and comprehensive workforce investment systems; and

(7) Improving youth programs through services which emphasize academic and occupational learning.

§ 661.410 What provisions of WIA and the Wagner-Peyser Act may be waived, and what provisions may not be waived?

(a) The Secretary may waive any of the statutory or regulatory requirements of subtitles B and E of title I of WIA, except for requirements relating to:

(1) Wage and labor standards;

(2) Non-displacement protections;

(3) Worker rights;

(4) Participation and protection of workers and participants;

(5) Grievance procedures and judicial review;

(6) Nondiscrimination;

(7) Allocation of funds to local areas;

(8) Eligibility of providers or participants;

(9) The establishment and functions of local areas and local boards; and

(10) Procedures for review and approval of State and Local plans; and

(b) The Secretary may waive any of the statutory or regulatory requirements of sections 8 through 10 of the Wagner-Peyser Act (29 U.S.C. 49g—49i) except for requirements relating to:

(1) The provision of services to unemployment insurance claimants and veterans; and

(2) Universal access to the basic labor exchange services without cost to job seekers.

(c) The Secretary does not intend to waive any of the statutory or regulatory provisions essential to the key reform principles embodied in the Workforce Investment Act, described in § 661.400, except in extremely unusual circumstances where the provision can be demonstrated as impeding reform. (WIA sec. 189(i).)

§ 661.420 Under what conditions may a Governor request, and the Secretary approve, a general waiver of statutory or regulatory requirements under section 189(i)(4)?

(a) A Governor may request a general waiver in consultation with appropriate chief elected officials:

(1) By submitting a waiver plan which may accompany the State's WIA 5-year strategic Plan; or

(2) After a State's WIA Plan is approved, by directly submitting a waiver plan.

(b) A Governor's waiver request may seek waivers for the entire State or for one or more local areas.

(c) A Governor requesting a general waiver must submit to the Secretary a plan to improve the Statewide workforce investment system that:

(1) Identifies the statutory or regulatory requirements for which a waiver is requested and the goals that the State or local area, as appropriate, intends to achieve as a result of the waiver and how those goals relate to the Strategic Plan goals;

(2) Describes the actions that the State or local area, as appropriate, has undertaken to remove State or local statutory or regulatory barriers;

(3) Describes the goals of the waiver and the expected programmatic outcomes if the request is granted;

(4) Describes the individuals affected by the waiver; and

(5) Describes the processes used to:

(i) Monitor the progress in implementing the waiver;

(ii) Provide notice to any Local Board affected by the waiver; and

(iii) Provide any Local Board affected by the waiver an opportunity to comment on the request.

(d) The Secretary issues a decision on a waiver request within 90 days after the receipt of the original waiver request.

(e) The Secretary will approve a waiver request if and only to the extent that:

(1) The Secretary determines that the requirements for which a waiver is requested impede the ability of either the State or local area to implement the State's plan to improve the Statewide workforce investment system;

(2) The Secretary determines that the waiver plan meets all of the requirements of WIA section 189(i)(4) and §§ 661.400–661.420 of this subpart; and

(3) The State has executed a memorandum of understanding with the Secretary requiring the State to meet, or ensure that the local area meets, agreed-upon outcomes and to implement other appropriate measures to ensure accountability.

(g) The Secretary will issue guidelines under which the States may request general waivers of WIA and Wagner-Peyser requirements. (WIA sec. 189(i).)

§ 661.430 Under what conditions may the Governor submit a Workforce Flexibility Plan?

(a) A State may submit to the Secretary, and the Secretary may approve, a workforce flexibility (work-flex) plan under which the State is authorized to waive, in accordance with the plan:

(1) Any of the statutory or regulatory requirements under title I of WIA applicable to local areas, if the local area requests the waiver in a waiver application, except for:

(i) Requirements relating to the basic purposes of title I of WIA;

(ii) Wage and labor standards;

(iii) Grievance procedures and judicial review;

(iv) Nondiscrimination;

(v) Eligibility of participants;

(vi) Allocation of funds to local areas;

(vii) Establishment and functions of local areas and local boards;

(viii) Review and approval of local plans;

(ix) Worker rights, participation, and protection; and

(x) Any of the statutory provisions essential to the key reform principles embodied in the Workforce Investment Act, described in § 661.400.

(2) Any of the statutory or regulatory requirements applicable to the State under sec. 8 through 10 of the Wagner-Peyser Act (29 U.S.C. 49g–49i), except for requirements relating to:

(i) The provision of services to unemployment insurance claimants and veterans; and

(ii) Universal access to basic labor exchange services without cost to job seekers; and

(3) Any of the statutory or regulatory requirements under the Older Americans Act of 1965 (OAA) (42 U.S.C. 3001 *et seq.*), applicable to State agencies on aging with respect to activities carried out using funds allotted under OAA section 506(a)(3) (42 U.S.C. 3056d(a)(3)), except for requirements relating to:

(i) The basic purposes of OAA;

(ii) Wage and labor standards;

(iii) Eligibility of participants in the activities; and

(iv) Standards for agreements.

(b) A State's workforce flexibility plan may accompany the State's five-year

Strategic Plan or may be submitted separately. If it is submitted separately, the workforce flexibility plan must identify related provisions in the State's five-year Strategic Plan.

(c) A workforce flexibility plan submitted under paragraph (a) of this section must include descriptions of:

(1) The process by which local areas in the State may submit and obtain State approval of applications for waivers;

(2) The statutory and regulatory requirements of title I of WIA that are likely to be waived by the State under the workforce flexibility plan;

(3) The statutory and regulatory requirements of sections 8 through 10 of the Wagner-Peyser Act that are proposed for waiver, if any;

(4) The statutory and regulatory requirements of the Older Americans Act of 1965 that are proposed for waiver, if any;

(5) The outcomes to be achieved by the waivers described in paragraphs (c)(1) to (4) of this section # including, where appropriate, revisions to adjusted levels of performance included in the State or local plan under title I of WIA; and

(6) The measures to be taken to ensure appropriate accountability for Federal funds in connection with the waivers.

(d) The Secretary may approve a workforce flexibility plan for a period of up to five years.

(e) Before submitting a workforce flexibility plan to the Secretary for approval, the State must provide adequate notice and a reasonable opportunity for comment on the proposed waiver requests under the workforce flexibility plan to all interested parties and to the general public.

(f) The Secretary will issue guidelines under which States may request designation as a work-flex State.

§ 661.440 What limitations apply to the State's Workforce Flexibility Plan authority under WIA?

(a)(1) Under work-flex waiver authority a State must not waive the WIA, Wagner-Peyser or Older Americans Act requirements which are excepted from the work-flex waiver authority and described in § 661.430(a).

(2) Requests to waive statutory and regulatory requirements of title I of WIA applicable at the State level may not be granted under work-flex waiver authority granted to a State. Such requests may only be granted by the Secretary under the general waiver authority described at §§ 661.410–661.420 of this subpart.

(b) As required in § 661.430(c)(5), States must address the outcomes to result from work-flex waivers as part of its workforce flexibility plan. Once approved, a State's work-flex designation is conditioned on the State demonstrating it has met the agreed-upon outcomes contained in its workforce flexibility plan.

PART 662—DESCRIPTION OF THE ONE-STOP SYSTEM UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

Subpart A—General Description of the One-Stop Delivery System

Sec.

Subpart B—One-Stop Partners and the Responsibilities of Partners

Subpart C—Memorandum of Understanding for the One-Stop Delivery System

Subpart D—One-Stop Operators

Authority: Section 506(c), Pub. L. 105–220; 20 U.S.C. 9276(c).

Subpart A—General Description of One-Stop Delivery System

§ 662.100 What is the One-Stop delivery system?

(a) In general, the One-Stop delivery system is a system under which entities responsible for administering separate workforce investment, educational, and other human resource programs and funding streams (referred to as One-Stop partners) collaborate to create a seamless system of service delivery that will enhance access to the programs' services and improve long-term employment outcomes for individuals receiving assistance.

(b) Title I of WIA assigns responsibilities at the local, State and Federal level to ensure the creation and maintenance of a One-Stop delivery system that enhances the range and quality of workforce development services that are accessible to individuals seeking assistance.

(c) The system must include at least one comprehensive physical center in each local area that must provide the core services specified in WIA section 134(d)(2), and must provide access to other programs and activities carried out by the One-Stop partners.

(d) While each local area must have at least one comprehensive center (and may have additional comprehensive centers), WIA section 134(c) allows for arrangements to supplement the center. These arrangements may include:

(1) A network of affiliated sites that can provide one or more partners' programs, services and activities at each site;

(2) A network of One-Stop partners through which each partner provides services that are linked, physically or technologically, to an affiliated site that assures individuals are provided information on the availability of core services in the local area; and

(3) Specialized centers that address specific needs, such as those of dislocated workers.

(e) The design of the local area's One-Stop delivery system, including the number of comprehensive centers and the supplementary arrangements, must be described in the local plan and be consistent with the memorandum of understanding executed with the One-Stop partners.

Subpart B—One-Stop Partners and the Responsibilities of Partners

§ 662.200 Who are the required One-Stop partners?

(a) WIA section 121(b)(1) identifies the entities that are required partners in the local One-Stop systems.

(b) The required partners are the entities that carry out:

(1) Programs authorized under title I of WIA, serving:

(i) Adults;

(ii) Dislocated workers;

(iii) Youth;

(iv) Job Corps;

(v) Native American programs;

(vi) Migrant and seasonal farmworker programs; and

(vii) Veterans' workforce programs; (WIA sec. 121(b)(1)(B)(i).)

(2) Programs authorized under the Wagner-Peyser Act (29 U.S.C. 49 *et seq.*); (WIA sec. 121(b)(1)(B)(ii).)

(3) Adult education and literacy activities authorized under title II of WIA; (WIA sec. 121(b)(1)(B)(iii).)

(4) Vocational rehabilitation programs authorized under parts A and B of title I of the Rehabilitation Act (29 U.S.C. 720 *et seq.*); (WIA sec. 121(b)(1)(B)(iv).)

(5) Welfare-to-work programs authorized under sec. 403(a)(5) of the Social Security Act (42 U.S.C. 603(a)(5) *et seq.*); (WIA sec. 121(b)(1)(B)(v).)

(6) Senior community service employment activities authorized under title V of the Older Americans Act of 1965 (42 U.S.C. 3056 *et seq.*); (WIA sec. 121(b)(1)(B)(vi).)

(7) Postsecondary vocational education activities under the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 *et seq.*); (WIA sec. 121(b)(1)(B)(vii).)

(8) Trade Adjustment Assistance and NAFTA Transitional Adjustment Assistance activities authorized under chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2271 *et seq.*); (WIA sec. 121(b)(1)(B)(viii).)

(9) Activities authorized under chapter 41 of title 38, U.S.C. (local veterans' employment representatives and disabled veterans outreach programs); (WIA sec. 121(b)(1)(B)(ix).)

(10) Employment and training activities carried out under the Community Services Block Grant (42 U.S.C. 9901 *et seq.*); (WIA sec. 121(b)(1)(B)(x).)

(11) Employment and training activities carried out by the Department of Housing and Urban Development; (WIA sec. 121(b)(1)(B)(xi).) and

(12) Programs authorized under State unemployment compensation laws (in accordance with applicable Federal law); (WIA sec. 121(b)(1)(B)(xii).)

§ 662.210 What other entities may serve as One-Stop partners?

(a) WIA provides that other entities that carry out a human resource program, including Federal, State, or local programs and programs in the private sector may serve as additional partners in the One-Stop system if the Local Board and chief elected official(s) approve the entity's participation.

(b) Additional partners may include:

(1) TANF programs authorized under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*);

(2) Employment and training programs authorized under section 6(d)(4) of the Food Stamp Act of 1977 (7 U.S.C. 2015(d)(4));

(3) Work programs authorized under section 6(o) of the Food Stamp Act of 1977 (7 U.S.C. 2015(o));

(4) Programs authorized under the National and Community Service Act of 1990 (42 U.S.C. 12501 *et seq.*); and

(5) other appropriate programs, including programs related to transportation and housing. (WIA section 121(b)(2).)

§ 662.220 What entity serves as the One-Stop partner for a particular program in the local area?

(a) The ''entity'' that carries out the program and activities listed in §§ 662.200 and 662.210 of this subpart, and, therefore, serves as the One-Stop partner is the grant recipient, administrative entity or organization responsible for administering the funds of the specified program in the local area. The term ''entity'' does not include the service providers that contract with or are subrecipients of the local administrative entity. For programs that do not include local administrative entities, the responsible State Agency should be the partner. Specific entities for specific programs are identified in paragraph (b) of this section.

(b)(1) For title II of WIA, the entity that carries out the program for the purposes of paragraph (a) of this section is the State eligible entity. The State eligible entity may designate an eligible provider as the ''entity'' for this purpose;

(2) For title I, Part A, of the Rehabilitation Act, the entity that carries out the program for the purposes of paragraph (a) of this section is the designated State agency or designated unit specified under section 101(a)(2) that is primarily concerned with vocational rehabilitation, or vocational and other rehabilitation, of individuals with disabilities; and

(3) Under WIA, the national programs, including Job Corps, the WIA Indian and Native American program, the Migrant and Seasonal Farmworkers program, and the Veterans' Workforce Investment program, are required One-Stop partners. Local Boards must include them in the One-Stop delivery system where they are present in their local area. In local areas where the national programs are not present, States and Local Boards should take steps to ensure that customer groups served by these programs have access to services through the One-Stop delivery system.

§ 662.230 What are the responsibilities of the required One-Stop partners?

All required partners must:

(a) Make available to participants through the One-Stop delivery system the core services that are applicable to the partner's programs; (WIA section 121(b)(1)(A).)

(b) Use a portion of funds made available to the partner's program, to the extent not inconsistent with the Federal law authorizing the partner's program, to:

(1) Create and maintain the One-Stop delivery system; and

(2) Provide core services; (WIA sec. 134(d)(1)(B).)

(c) Enter into a memorandum of understanding (MOU) with the Local Board relating to the operation of the One-Stop system that meets the requirements of § 662.300, including a description of services, how the cost of the identified services and operating costs of the system will be funded, and methods for referrals (WIA sec. 121(c));

(d) Participate in the operation of the One-Stop system consistent with the terms of the MOU and requirements of authorizing laws; (WIA sec. 121(b)(1)(B).) and

(e) Serve as a representative on the local workforce investment board. (WIA sec. 117(b)(2)(A)(vi).)

§ 662.240 What are a program's applicable core services?

(a) The core services applicable to any One-Stop partner program are those services described in paragraph (b) of this section, that are authorized and provided under the partner's program.

(b) The core services identified in section 134(d)(2) of the WIA are:

(1) Determinations of whether the individuals are eligible to receive assistance under subtitle B of title I of WIA;

(2) Outreach, intake (which may include worker profiling), and orientation to the information and other services available through the One-Stop delivery system;

(3) Initial assessment of skill levels, aptitudes, abilities, and supportive service needs;

(4) Job search and placement assistance, and where appropriate, career counseling;

(5) Provision of employment statistics information, including the provision of

accurate information relating to local, regional, and national labor market areas, including—

(i) Job vacancy listings in such labor market areas;

(ii) Information on job skills necessary to obtain the listed jobs; and

(iii) Information relating to local occupations in demand and the earnings and skill requirements for such occupations;

(6) Provision of program performance information and program cost information on:

(i) Eligible providers of training services described in WIA section 122;

(ii) Eligible providers of youth activities described in WIA section 123;

(iii) Providers of adult education described in title II;

(iv) Providers of postsecondary vocational education activities and vocational education activities available to school dropouts under the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 *et seq.*); and

(v) Providers of vocational rehabilitation program activities described in title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 *et seq.*);

(7) Provision of information on how the local area is performing on the local performance measures and any additional performance information with respect to the One-Stop delivery system in the local area;

(8) Provision of accurate information relating to the availability of supportive services, including, at a minimum, child care and transportation, available in the local area, and referral to such services, as appropriate;

(9) Provision of information regarding filing claims for unemployment compensation;

(10) Assistance in establishing eligibility for—

(i) Welfare-to-work activities authorized under section 403(a)(5) of the Social Security Act (42 U.S.C. 603(a)(5)) available in the local area; and

(ii) Programs of financial aid assistance for training and education programs that are not funded under this Act and are available in the local area; and

(11) Followup services, including counseling regarding the workplace, for participants in workforce investment activities authorized under subtitle (B) of title I of WIA who are placed in unsubsidized employment, for not less than 12 months after the first day of the employment, as appropriate.

§ 662.250 Where and to what extent must required One-Stop partners make core services available?

(a) At a minimum, the core services that are applicable to the program of the partner under § 662.220, and that are in addition to the basic labor exchange services traditionally provided in the local area under the Wagner-Peyser program, must be made available at the comprehensive One-Stop center. These services must be made available to individuals attributable to the partner's program who seek assistance at the center. The adult and dislocated worker program partners are required to make all of the core services listed in § 662.240 available at the center in accordance with 20 CFR 663.100(b)(1).

(b) The applicable core services may be made available by the provision of appropriate technology at the comprehensive One-Stop center, by co-locating personnel at the center, cross-training of staff, or through a cost reimbursement or other agreement between service providers at the comprehensive One-Stop center and the partner, as described in the MOU.

(c) The responsibility of the partner for the provision of core services must be proportionate to the use of the services at the comprehensive One-Stop center by the individuals attributable to the partner's program. The specific method of determining each partner's proportionate responsibility must be described in the MOU.

(d) For purposes of this part, individuals attributable to the partner's program may include individuals who are referred through the comprehensive One-Stop center and enrolled in the partner's program after the receipt of core services, who have been enrolled in the partner's program prior to receipt of the applicable core services at the center, who meet the eligibility criteria for the partner's program and who receive an applicable core service, or who meet an alternative definition described in the MOU.

(e) Under the MOU, the provision of applicable core services at the Center by the One-Stop partner may be supplemented by the provision of such services through the networks of affiliated sites and networks of One-Stop partners described in WIA section 134(c)(2).

§ 662.260 What services, in addition to the applicable core services, are to be provided by One-Stop partners through the One-Stop delivery system?

In addition to the provision of core services, One-Stop partners must provide access to the other activities and programs carried out under the partner's authorizing laws. The access to these services must be described in the local MOU. 20 CFR part 663 describes the specific requirements relating to the provision of core, intensive, and training services through the One-Stop system that apply to the adult and the dislocated worker programs authorized under title I of WIA. Additional requirements apply to the provision of all labor exchange services under the Wagner-Peyser Act. (WIA sec. 134(c)(1)(D).)

§ 662.270 How are the costs of providing services through the One-Stop delivery system and the operating costs of the system to be funded?

The MOU must describe the particular funding arrangements for services and operating costs of the One-Stop delivery system. Each partner must contribute a fair share of the operating costs of the One-Stop delivery system proportionate to the use of the system by individuals attributable to the partner's program. There are a number of methods, consistent with the requirements of the relevant OMB circulars, that may be used for allocating costs among the partners. Some of these methodologies include allocations based on direct charges, cost pooling, indirect cost rates and activity-based cost allocation plans. Additional guidance relating to cost allocation methods may be issued by the Department in consultation with the other appropriate Federal agencies.

§ 662.280 Does title I require One-Stop partners to use their funds for individuals who are not eligible for the partner's program or for services that are not authorized under the partner's program?

No. The requirements of the partner's program continue to apply. The Act intends to create a seamless service delivery system for individuals seeking workforce development services by linking the One-Stop partners in the One-Stop delivery system. While the overall effect is to provide universal access to core services, the resources of each partner may only be used to provide services that are authorized and provided under the partner's program to individuals who are eligible under such program. (WIA sec. 121(b)(1).)

Subpart C—Memorandum of Understanding of the One-Stop Delivery System

§ 662.300 What is the Memorandum of Understanding?

(a) The Memorandum of Understanding (MOU) is an agreement developed and executed between the Local Board, with the agreement of the

chief elected official, and the One-Stop partners relating to the operation of the One-Stop delivery system in the local area.

(b) The MOU must contain the provisions required by WIA section 121(c)(2). These provisions cover services to be provided through the One-Stop delivery system; the funding of the services and operating costs of the system; and methods for referring individuals between the One-Stop operators and partners. The MOU's provisions also must determine the duration and procedures for amending the MOU, and may contain any other provisions that are consistent with WIA title I and these regulations agreed to by the parties. (WIA sec. 121(c).)

§ 662.310 Is there a single MOU for the local area or are there to be separate MOU's between the Local Board and each partner?

(a) A single ''umbrella'' MOU may be developed that addresses the issues relating to the local One-Stop delivery system for the Local Board and all partners, or the Local Board and the partners may decide to enter into separate agreements between the Local Board and one or more partners. Under either approach, the requirements described in § 662.310 apply. Since funds are generally appropriated annually, financial agreements may be negotiated with each partner annually to clarify funding of services and operating costs of the system under the MOU.

(b) WIA emphasizes full and effective partnerships between Local Boards and One-Stop partners. Local Boards and partners must enter into good-faith negotiations. Local Boards and partners may request assistance from a State agency responsible for administering the partner program, the Governor, State Board, or other appropriate parties. The State agencies, the State Board, and the Governor may also consult with the appropriate Federal agencies to address impasse situations after exhausting other alternatives. The Local Board and partners must document the negotiations and efforts that have taken place. Any failure to execute an MOU between a Local Board and a required partner must be reported by the Local Board and the required partner to the Governor or State Board, and the State agency responsible for administering the partner's program, and by the Governor or the State Board and the responsible State agency to the Secretary of Labor and to the head of any other Federal agency with responsibility for oversight of a partner's program. (WIA sec. 121(c).)

(c) If an impasse has not been resolved through the alternatives available under this section any partner that fails to execute an MOU may not be permitted to serve on the Local Board. In addition, any local area in which a Local Board has failed to execute an MOU with all of the required partners is not eligible for State incentive grants awarded on the basis of local coordination of activities under 20 CFR 665.200(d)(2).

Subpart D—One-Stop Operators

§ 662.400 Who is the One-Stop operator?

(a) The One-Stop operator is the entity that performs the role described in paragraph (c) of this section. The types of entities that may be selected to be the One-Stop operator include:

(1) A postsecondary educational institution;

(2) An Employment Service agency established under the Wagner-Peyser Act on behalf of the local office of the agency;

(3) A private, nonprofit organization (including a community-based organization);

(4) A private for-profit entity;

(5) A government agency; and

(6) Another interested organization or entity.

(b) One-Stop operators may be a single entity or a consortium of entities and may operate one or more One-Stop centers. In addition, there may be more than one One-Stop operator in a local area.

(c) The agreement between the Local Board and the One-Stop operator shall specify the operator's role. That role may range between simply coordinating service providers within the center to being the primary provider of services within the center. (WIA sec. 121(d).)

§ 662.410 How is the One-Stop operator selected?

(a) The Local Board, with the agreement of the chief elected official, must designate and certify One-Stop operators in each local area.

(b) The One-Stop operator is designated or certified:

(1) Through a competitive process, or

(2) Under an agreement between the Local Board and a consortium of entities that includes at least three or more of the required One-Stop partners identified at § 662.200. (WIA sec. 121(d).)

§ 662.420 Under what limited conditions may the Local Board be designated or certified as the One-Stop operator?

(a) The Local Board may be designated or certified as the One-Stop operator only with the agreement of the chief elected official and the Governor.

(b) The designation or certification must be made publicly, in accordance with the requirements of the ''sunshine provision'' in WIA section 117(e), and must be reviewed whenever the biennial certification of the Local Board is made under 20 CFR 663.300(a). (WIA sec. 117(f)(2).)

§ 662.430 Under what conditions may existing One-Stop delivery systems be certified to act as the One-Stop operator?

Under WIA section 121(e), the Local Board, the chief elected official and the Governor may agree to certify an entity as a One-Stop operator under the following circumstances:

(a) A One-Stop delivery system, consistent with the scope and meaning of the term in WIA section 134(c), existed in the local area prior to August 7, 1998;

(b) The certification is consistent with the requirements of:

(1) WIA section 121(b) and;

(2) the Memorandum(s) of Understanding; and

(c) The certification must be made publicly, in accordance with the ''sunshine provision'' at WIA section 117(e). (WIA section 121(e).)

PART 663—ADULT AND DISLOCATED WORKER ACTIVITIES UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

Subpart A— Delivery of Adult and Dislocated Worker Services Through the One-Stop Delivery System

Sec.

Subpart B—Intensive Services

Authority: Section 506(c), Pub. L. 105–220; 20 U.S.C. 9276(c).

Subpart A—Delivery of Adult and Dislocated Worker Services through the One-Stop Delivery System

§ 663.100 What is the role of the adult and dislocated worker program in the One-Stop delivery system?

(a) The One-Stop system is the basic delivery system for adult and dislocated worker services. Through this system, adults and dislocated workers can access a continuum of services. The services are organized into three levels: core, intensive, and training.

(b) The chief elected official or his/her designee(s), as the local grant recipient(s) for the adult and dislocated worker programs, is a required One-Stop partner and is subject to the provisions relating to such partners described in 20 CFR part 662. Consistent with those provisions:

(1) Core services for adults and dislocated workers must be made available in at least one comprehensive One-Stop center in each local workforce investment area. Services may also be available elsewhere, either at affiliated sites or at specialized centers. For example, specialized centers may be established to serve workers being dislocated from a particular employer or industry, or to serve residents of public housing.

(2) The One-Stop centers also make intensive services available to adults and dislocated workers, as needed, either by the One-Stop operator directly or through contracts with service providers that are approved by the Local Board.

(3) Through the One-Stop system, adults and dislocated workers needing training are provided Individual Training Accounts (ITA's) and access to lists of eligible providers of training. These lists contain quality consumer information, including cost and performance information for each of the providers, so that participants can make informed choices on where to use their ITA's. (ITA's are more fully discussed in subpart D of this part.)

§ 663.105 When must adults and dislocated workers be registered?

(a) Registration is the process for collecting information for supporting a determination of eligibility. This information may be collected through methods that include electronic data transfer, personal interview, or an individual's application.

(b) Adults and dislocated workers who receive services funded under title I other than self-service or informational activities must be registered and determined eligible.

(c) EEO data must be collected on individuals during the registration process.

§ 663.110 What are the eligibility criteria for adults in the adult and dislocated worker program?

To be an eligible adult in the adult and dislocated worker program, an individual must be 18 years of age or older. To be eligible for the dislocated worker program, an eligible adult must meet the criteria of § 663.115 of this subpart.

§ 663.115 What are the eligibility criteria for dislocated workers in the adult and dislocated worker program?

(a) To be an eligible dislocated worker in the adult and dislocated worker program, an individual must meet the definition of ''dislocated worker'' at WIA section 101(9).

(b) Governors and Local Boards may establish policies and procedures for One-Stop operators to use in determining an individual's eligibility as a dislocated worker, consistent with the definition at WIA section 101(9). These policies and procedures may address such conditions as:

(1) What constitutes a ''general announcement'' of plant closing under WIA section 101(9)(B)(ii) or (iii); and (2) What constitutes ''unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disasters' for determining the eligibility of self-employed individuals, including family members and farm or ranch hands, under WIA section 101(9)(C).

§ 663.120 Are displaced homemakers eligible for dislocated worker activities under WIA?

(a) Yes. There are two significant differences from the eligibility requirements under the Job Training Partnership Act.

(b) Under the dislocated worker program in JTPA, displaced homemakers are defined as ''additional dislocated workers'' and are only eligible to receive services if the Governor determines that providing such services would not adversely affect the delivery of services to the other eligible dislocated workers. Under WIA section 101(9), displaced homemakers who meet the definition at WIA section 101(10) are eligible dislocated workers without any additional determination.

(c) The definition of displaced homemaker under JTPA included individuals who had been dependent upon public assistance under Aid for Families with Dependent Children (AFDC) as well as those who had been dependent on the income of another family member. The definition in WIA section 101(10) includes only those individuals who were dependent on a family member's income. Those individuals who have been dependent on public assistance may be served in the adult program.

§ 663.145 What services are WIA title I adult and dislocated workers formula funds used to provide?

(a) WIA title I formula funds allocated to local areas for adults and dislocated workers must be used to provide core, intensive and training services through the One-Stop delivery system. Local Boards determine the most appropriate mix of these services, but all three types must be available for both adults and dislocated workers.

(b) WIA title I funds may also be used to provide the other services described in WIA section 134(e):

(1) Discretionary One-Stop delivery activities, including:

(i) Customized screening and referral of qualified participants in training services to employment; and

(ii) Customized employment-related services to employers on a fee-for-service basis that are in addition to labor exchange services available to employers under the Wagner-Peyser Act.

(2) Supportive services, including needs-related payments, as described in subpart H of this part.

§ 663.150 What core services must be provided to adults and dislocated workers?

(a) At a minimum, all of the core services described in WIA section 134(d)(2) and 20 CFR 662.220 must be provided in each local area through the One-Stop delivery system.

(b) Followup services must be made available, for a minimum of 12 months following the first day of employment, to registered participants who are placed in unsubsidized employment.

§ 663.155 How are core services delivered?

Core services must be provided through the One-Stop delivery system. Core services may be provided directly by the One-Stop operator or through contracts with service providers that are approved by the Local Board. The Local Board may only be a provider of core services when approved by the chief elected official and the Governor in accordance with the requirements of WIA section 117(f)(2) and 20 CFR 661.310.

§ 663.160 Are there particular core services an individual must receive before receiving intensive services under WIA section 134(d)(3)?

(a) Yes. At a minimum, an individual must receive at least one core service, such as an initial assessment or job search and placement assistance, before receiving intensive services. The initial assessment determines the individual's skill levels, aptitudes, and supportive services needs. The job search and placement assistance helps the individual determine whether he or she is unable to obtain employment, and thus requires more intensive services to obtain employment. The decision on which core services to provide, and the timing of their delivery, may be made on a case-by-case basis at the local level depending upon the needs of the participant.

(b) A determination of the need for intensive services under § 663.220, as established by the initial assessment or the individual's inability to obtain employment through the core services provided, must be contained in the participant's case file.

§ 663.165 How long must an individual be in core services in order to be eligible for intensive services?

There is no Federally-required minimum time period for participation in core services before receiving intensive services. [WIA section 134(d)(3).]

Subpart B—Intensive Services

§ 663.200 What are intensive services for adults and dislocated workers?

(a) Intensive services are listed in WIA section 134(d)(3)(C). The list in the Act is not all-inclusive and other intensive services, such as out-of-area job search assistance, literacy activities related to basic workforce readiness, relocation assistance, internships, and work experience may be provided, based on an assessment or individual employment plan.

(b) For the purposes of paragraph (a) of this section, work experience is a planned, structured learning experience that takes place in a workplace for a limited period of time. Work experience may be paid or unpaid, as appropriate. A work experience workplace may be in the private for profit sector, the non-profit sector, or the public sector.

§ 663.210 How are intensive services delivered?

(a) Intensive services must be provided through the One-Stop delivery system. Intensive services may be provided directly by the One-Stop operator or through contracts with service providers that are approved by the Local Board. (WIA secs. 117(d)(2)(D) and 134(d)(3)(B).)

(b) The Local Board may only be a provider of intensive services when approved by the chief elected official and the Governor in accordance with WIA section 117(f)(2) and 20 CFR 661.310.

§ 663.220 Who may receive intensive services?

There are two categories of adults and dislocated workers who may receive intensive services:

(a) Adults and dislocated workers who are unemployed, have received at least one core service and are unable to obtain employment through core

services, and are determined by a One-Stop operator to be in need of more intensive services to obtain employment; and

(b) Adults and dislocated workers who are employed, have received at least one core service, and are determined by a One-Stop operator to be in need of intensive services to obtain or retain employment that leads to self-sufficiency, as described in § 663.230.

§ 663.230 What criteria must be used to determine whether an employed worker needs intensive services to obtain or retain employment leading to ''self-sufficiency''?

State Boards or Local Boards must set the criteria for determining whether employment leads to self-sufficiency. At a minimum, such criteria must provide that self-sufficiency means employment that pays at least the lower living standard income level, as defined in WIA section 101(24). Self-sufficiency for a dislocated worker may be defined in relation to a percentage of the layoff wage.

§ 663.240 Are there particular intensive services an individual must receive prior to receiving training services under WIA section 134(d)(4)(A)(i)?

(a) Yes. At a minimum, an individual must receive at least one intensive service, such as development of an individual employment plan with a case manager or individual counseling and career planning, before the individual may receive training services.

(b) The case file must contain a determination of need for training services under § 663.310, as identified in the individual employment plan, comprehensive assessment, or through any other intensive service received.

§ 663.245 What is the individual employment plan?

The individual employment plan is an ongoing strategy jointly developed by the participant and the case manager that identifies the participant's employment goals, the appropriate achievement objectives, and the appropriate combination of services for the participant to achieve the employment goals.

§ 663.250 How long must an individual participant be in intensive services to be eligible for training services?

There is no Federally-required minimum time period for participation in intensive services before receiving training services. (WIA section 134(d)(4)(A)(i).)

Subpart C—Training Services

§ 663.300 What are training services for adults and dislocated workers?

Training services are listed in WIA section 134(d)(4)(D). The list in the Act is not all-inclusive and additional training services may be provided.

§ 663.310 Who may receive training services?

Training services may be made available to employed and unemployed adults and dislocated workers who:

(a) Have met the eligibility requirements for intensive services, have received at least one intensive service under § 663.240, and have been determined to be unable to obtain or retain employment through such services;

(b) After an interview, evaluation, or assessment, and case management, have been determined by a One-Stop operator or One-Stop partner, to be in need of training services and to have the skills and qualifications to successfully complete the selected training program;

(c) Select a program of training services that is directly linked to the employment opportunities either in the local area or in another area to which the individual is willing to relocate;

(d) Are unable to obtain grant assistance from other sources to pay the costs of such training, including Federal Pell Grants established under title IV of the Higher Education Act of 1965, or require WIA assistance in addition to other sources of grant assistance, including Federal Pell Grants (provisions relating to fund coordination are found at § 663.320 and WIA section 134(d)(4)(B)); and

(e) For individuals whose services are provided through the adult funding stream, are determined eligible in accordance with the State and local priority system, if any, in effect for adults under WIA section 134(d)(4)(E) and § 663.600. [WIA section 134(d)(4)(A).]

§ 663.320 What are the requirements for coordination of WIA training funds and other grant assistance?

(a) WIA funding for training is limited to participants who:

(1) Are unable to obtain grant assistance from other sources to pay the costs of their training; or

(2) Require assistance beyond that available under grant assistance from other sources to pay the costs of such training. Program operators and training providers must coordinate funds available to pay for training as described in paragraphs (b) and (c) of this section.

(b) Program operators must coordinate training funds available and make funding arrangements with One-Stop partners and other entities to apply the provisions of paragraph (a) of this section. Training providers must consider the availability of Pell Grants and other sources of grants to pay for training costs, so that WIA funds supplement other sources of training grants.

(c) A WIA participant may enroll in WIA-funded training while his/her application for a Pell Grant is pending as long as the One-Stop operator has made arrangements with the training provider and the WIA participant regarding allocation of the Pell Grant, if it is subsequently awarded. In that case, the training provider must reimburse the One-Stop operator the WIA funds used to underwrite the training for the amount the Pell Grant covers. Reimbursement is not required from the portion of Pell Grant assistance disbursed to the WIA participant for education-related expenses. (WIA section 134(d)(4)(B).)

Subpart D—Individual Training Accounts

§ 663.400 How are training services provided?

Except under the three conditions described in WIA section 134(d)(4)(G)(ii) and § 663.430(a), the Individual Training Account (ITA) is established for eligible individuals to finance training services. Local Boards may only provide training services under § 663.430 if they receive a waiver from the Governor and meet the requirements of 20 CFR 661.310 and WIA section 117(f)(1). (WIA section 134(d)(4)(G).)

§ 663.410 What is an Individual Training Account?

The ITA is established on behalf of a participant. WIA title I adult and dislocated workers purchase training services from eligible providers they select in consultation with the case manager. Payments from ITA's may be made in a variety of ways, including the electronic transfer of funds through financial institutions, vouchers, or other appropriate methods. Payments may also be made incrementally; through payment of a portion of the costs at different points in the training course. (WIA section 134(d)(4)(G).)

§ 663.420 Can the duration and amount of ITA's be limited?

(a) Yes. The State or Local Board may impose limits on ITA's, such as limitations on the dollar amount and/or duration.

(b) Limits to ITA's may be established in different ways:

(1) There may be a limit for an individual participant that is based on the needs identified in the individual employment plan; or

(2) There may be a policy decision by the State Board or Local Board to establish a range of amounts and/or a maximum amount applicable to all ITA's.

(c) Limitations established by State or Local Board policies must be described in the State or Local Plan, respectively, but should not be implemented in a manner that undermines the Act's requirement that training services are provided in a manner that maximizes customer choice in the selection of an eligible training provider.

§ 663.430 Under what circumstances may mechanisms other than ITA's be used to provide training services?

(a) Contracts for services may be used instead of ITA's only when one of the following three exceptions applies:

(1) When the services provided are on-the-job training (OJT) or customized training;

(2) When the Local Board determines that there are an insufficient number of eligible providers in the local area to accomplish the purpose of a system of ITA's. The Local Plan must describe the process to be used in selecting the providers under a contract for services. This process must include a public comment period for interested providers of at least 30 days;

(3) When the Local Board determines that there is a training services program of demonstrated effectiveness offered in the area by a community-based organization (CBO) or another private organization to serve special participant populations that face multiple barriers to employment, as described in paragraph (b) in this section. The Local Board must develop criteria to be used in determining demonstrated effectiveness, particularly as it applies to the special participant population to be served. The criteria may include:

(i) Financial stability of the organization;

(ii) Demonstrated performance in measures appropriate to the program including program completion rate; attainment of the skills, certificates or degrees the program is designed to provide; placement after training in unsubsidized employment; and retention in employment; and

(iii) How the specific program relates to the workforce investment needs identified in the local plan.

(b) Under paragraph (a)(3) of this section, special participant populations that face multiple barriers to employment are populations of low-income individuals that are included in one or more of the following categories:

(1) Individuals with substantial language or cultural barriers;

(2) Offenders;

(3) Homeless individuals; and

(4) Other hard-to-serve populations as defined by the Governor.

§ 663.440 What are the requirements for consumer choice?

(a) Training services, whether under ITA's or under contract, must be provided in a manner that maximizes informed consumer choice in selecting an eligible provider.

(b) Each Local Board, through the One-Stop center, must make available to customers the State list of eligible providers required in WIA section 122(e). The list includes a description of the programs through which the providers may offer the training services, the information identifying eligible providers of on-the-job training and customized training required under WIA section 122(h) (where applicable), and the performance and cost information about eligible providers of training services described in WIA sections 122(e) and (h).

(c) An individual who has been determined eligible for training services under § 663.310 may select a provider described in paragraph (b) of this section after consultation with a case manager. Unless the program has exhausted funds for the program year, the operator must refer the individual to the selected provider, and establish an ITA for the individual to pay for training. For purposes of this paragraph, a referral may be carried out by providing a voucher or certificate to the individual to obtain the training.

(d) The cost of referral of an individual with an ITA to a training provider is paid by the applicable adult or dislocated worker program under title I of WIA.

Subpart E—Eligible Training Providers

§ 663.500 What is the purpose of this subpart?

The workforce investment system established under WIA emphasizes informed customer choice, system performance, and continuous improvement. The eligible provider process is part of the strategy for achieving these goals. Local Boards, in partnership with the State, identify training providers whose performance qualifies them to receive WIA funds to train adults and dislocated workers. After receiving core and intensive services and in consultation with case managers, eligible participants who need training use the list of these eligible providers to make an informed choice. The ability of providers to successfully perform, the procedures State and Local Boards use to establish eligibility, and the degree to which information, including performance information, on those providers is made available to customers eligible for training services, are key factors affecting the successful implementation of the Statewide workforce investment system. This subpart describes the process for determining eligible training providers.

§ 663.505 What are Eligible Providers of Training Services?

(a) Eligible providers of training services are described in WIA section 122. They are those entities eligible to receive WIA title I–B funds to provide training services to eligible adult and dislocated worker customers.

(b) In order to provide training services under WIA title I–B, a provider must meet the requirements of this subpart and WIA section 122.

(1) These requirements apply to the use of WIA title I adult and dislocated worker funds to provide training:

(i) To individuals using ITA's to access training through the eligible provider list; and

(ii) To individuals for training provided through the exceptions to ITA's described at § 663.430(a)(2) and (a)(3).

(2) These requirements apply to all organizations providing training to adult and dislocated workers, including:

(i) Postsecondary educational institutions providing a program described in section 122(a)(2)(A)(ii);

(ii) Entities that carry out programs under the National Apprenticeship Act (29 U.S.C. 50 *et seq.*);

(iii) Other public or private providers of a program of training services described in WIA section 122(a)(2)(C);

(iv) Local Boards, if they meet the conditions of WIA section 117(f)(1), and

(v) Community-based organizations and other private organizations providing training under § 663.430.

(c) Provider eligibility procedures must be established by the Governor, as required by this subpart. Different procedures are described in WIA for determinations of ''initial'' and ''subsequent'' eligibility. Because the processes are different, they are discussed separately.

§ 663.508 What is a ''program of training services''?

A program of training services is:

(a) One or more courses or classes that, upon successful completion, leads to:

(1) A certificate, an associate degree, or baccalaureate degree, or

(2) A competency or skill recognized by employers, or

(b) A training regimen that provides individuals with additional skills or competencies generally recognized by employers.

§ 663.510 Who is responsible for managing the eligible provider process?

(a) The State and the Local Boards each have responsibilities for managing the eligible provider process.

(b) The Governor must establish eligibility criteria for certain providers to become initially eligible and must set minimum levels of performance for all providers to remain subsequently eligible.

(c) The Governor must designate a State agency (called ''designated State agency'') to assist in carrying out WIA section 122. The designated State agency is responsible for:

(1) Developing and maintaining the State list of eligible providers, which is comprised of lists submitted by Local Boards;

(2) Verifying the accuracy of the information on the State list, in consultation with the Local Boards, removing providers who do not meet program performance levels, and taking appropriate enforcement actions, against providers in the case of the intentional provision of inaccurate information, as described in WIA section 122(f)(1), and in the case of a substantial violation of the requirements of WIA, as described in WIA section 122(f)(2);

(3) Disseminating the State list, accompanied by performance and cost information relating to each provider, to One-Stop operators throughout the State.

(d) The Local Board must:

(1) Accept applications for initial eligibility from certain postsecondary institutions and entities providing apprenticeship training;

(2) Carry out procedures prescribed by the Governor to assist in determining the initial eligibility of other providers;

(3) Carry out procedures prescribed by the Governor to assist in determining the subsequent eligibility of all providers;

(4) Compile a local list of eligible providers, collect the performance and cost information and any other required information relating to providers;

(5) Submit the local list and information to the designated State agency;

(6) Ensure the dissemination and appropriate use of the State list through the local One-Stop system;

(7) Consult with the designated State agency in cases where termination of an eligible provider is contemplated because inaccurate information has been provided; and

(8) Work with the designated State agency in cases where the termination of an eligible provider is contemplated because of violations of the Act.

(e) The Local Board may:

(1) Make recommendations to the Governor on the procedures to be used in determining initial eligibility of certain providers;

(2) Increase the levels of performance required by the State for local providers to maintain subsequent eligibility;

(3) Require additional verifiable program-specific information from local providers to maintain subsequent eligibility.

§ 663.515 What is the process for initial determination of provider eligibility?

(a) For postsecondary educational institutions that are eligible to receive assistance under title IV of the Higher Education Act, and that provide a program that leads to an associate or baccalaureate degree or certificate, and for entities carrying out apprenticeship programs registered under the National Apprenticeship Act to be initially eligible to receive adult or dislocated worker training funds under title I of WIA, the institution or entity must submit an application to the Local Board(s) for the local area(s) in which the provider desires to provide training services that describes each program of training services, as defined in § 663.508, that leads to such a degree or certificate or is registered under the National Apprenticeship Act.

(b) Local Boards determine the procedures to use in making an application under paragraph (a) of this section. The Local Board procedures must specify the timing, manner, and contents of the required application.

(c) For other providers,

(1) The Governor must develop a procedure for use by Local Boards for determining the eligibility of other providers, after

(i) Soliciting and taking into consideration recommendations from Local Boards and providers of training services within the State; and

(ii) Providing an opportunity for interested members of the public, including representatives of business and labor organizations, to submit comments on the procedure.

(2) The procedure must be described in the State Plan.

(3)(i) The procedure must require that the provider must submit an application to the Local Board at such time and in such manner as may be required, which contains a description of the program of training services;

(ii) If the provider provides a program of training services on the date of application, the procedure must require that the application include an appropriate portion of the performance information and program cost information described in § 663.540 of this subpart, and that the program meet appropriate levels of performance;

(iii) If the provider does not provide a program of training services on that date, the procedure must require that the provider meet appropriate requirements specified in the procedure. (WIA section 122(b)(2)(D).)

(4) Programs of training services provided by postsecondary educational institutions that do not lead to an associate or baccalaureate degree or certificate and apprenticeship programs that are not registered under the National Apprenticeship Act must be determined initially eligible under the provisions of this paragraph (c).

(d) The Local Board must include providers that meet the requirements of paragraphs (a) and (c) of this section on a local list and submit the list to the designated State agency. The State agency has 30 days to verify the information relating to the providers under paragraph (c) of this section. After the agency verifies that the provider meets the criteria for initial eligibility, or 30 days have elapsed, whichever occurs first, the provider is initially eligible as a provider of training services. The providers submitted under paragraph (a) of this section are initially eligible without State agency review. (WIA section 122(e).)

§ 663.530 Is there a time limit on the period of initial eligibility for training providers?

Yes. Under WIA section 122(c)(5), the Governor must require training providers to submit performance information and meet performance levels annually in order to remain eligible providers. States may require that these performance requirements be met one year from the date that initial eligibility was determined, or may require all eligible providers to submit performance information by the same date each year. If the latter approach is adopted, the Governor may exempt eligible providers whose determination of initial eligibility occurs within six months of the date of submissions. The effect of this requirement is that no training provider may have a period of initial eligibility that exceeds eighteen months.

§ 663.535 What is the process for determination of the subsequent eligibility of a provider?

(a) The Governor must develop a procedure for the Local Board to use in determining the subsequent eligibility of all eligible training providers determined initially eligible under § 663.515 (a) and (c), after:

(1) Soliciting and taking into consideration recommendations from Local Boards and providers of training services within the State, and

(2) Providing an opportunity for interested members of the public, including representatives of business and labor organizations, to submit comments on such procedure.

(b) The procedure must be described in the State Plan.

(c) The procedure must require that:

(1) Providers annually submit performance and cost information as described at WIA sections 122(d)(1) and (2), for each program of training services for which the provider has been determined to be eligible, in a time and manner determined by the Local Board;

(2) Providers annually meet minimum performance levels described at WIA section 122(c)(6).

(d) The provider's performance information must meet the minimum acceptable levels established under paragraph (c)(2) of this section to remain eligible;

(e) Local Boards may require higher levels of performance for local providers than the levels specified in the procedures established by the Governor. (WIA sections 122(c)(5) and (c)(6).)

(f) The State procedure must require Local Boards to take into consideration:

(1) The specific economic, geographic and demographic factors in the local areas in which providers seeking eligibility are located, and

(2) The characteristics of the populations served by providers seeking eligibility, including the demonstrated difficulties in serving these populations, where applicable.

(g) The Local Board retains those providers on the local list that meet the required performance levels and other elements of the State procedures and submits the list, accompanied by the performance and cost information, and any additional required information, to the designated State agency. If the designated State agency determines within 30 days from the receipt of the information that the provider does not meet the performance levels established under paragraph (c)(2) of this section, the provider may be removed from the list. A provider retained on the local list and not removed by the designated State agency is considered an eligible provider of training services.

§ 663.540 What kind of performance and cost information is required for determinations of subsequent eligibility?

(a) Eligible providers of training services must submit, at least annually, under procedures established by the Governor under § 663.535(c):

(1) Verifiable program-specific performance information, including:

(i) The information described in WIA section 122(d)(1)(A)(i) for all individuals participating in the programs of training services, including individuals who are not receiving assistance under WIA section 134 and individuals who are receiving such assistance; and

(ii) The information described in WIA section 122(d)(1)(A)(ii) relating only to individuals receiving assistance under the WIA adult and dislocated worker program who are participating in the applicable program of training services; and

(2) Information on program costs (such as tuition and fees) for WIA participants in the program.

(b) Governors may require any additional verifiable performance information (such as the information described at WIA section 122(d)(2)) that the Governor determines to be appropriate to obtain subsequent eligibility, including information regarding all participating individuals as well as individuals receiving assistance under the WIA adult and dislocated worker program.

(c) If the additional information required under paragraph (b) of this section imposes extraordinary costs on providers, or if providers experience extraordinary costs in the collection of information,

(1) The Governor or Local Board must provide access to cost-effective methods for the collection of the information; or

(2) The Governor must provide additional resources to assist providers in the collection of the information from funds for Statewide workforce investment activities reserved under WIA sections 128(a) and 133(a)(1).

(d) The Local Board and the designated State agency may accept program-specific performance information consistent with the requirements for eligibility under title IV of the Higher Education Act of 1965 from a provider for purposes of enabling the provider to fulfill the applicable requirements of this section, if the information is substantially similar to the information otherwise required under this section.

§ 663.550 How is eligible provider information developed and maintained?

(a) The designated State agency must maintain a list of all eligible training providers in the State (the ''State list'').

(b) The State list is a compilation of the eligible providers identified or retained by local areas and that have not been removed under § 663.535(c) and 663.565.

(c) The State list must be accompanied by the performance and cost information contained in the local lists as required by § 663.535(e). (WIA section 122(e)(4)(A).)

§ 663.555 How is the State list disseminated?

(a) The designated State agency must disseminate the State list and accompanying performance and cost information to the One-Stop delivery systems within the State.

(b) The State list and information must be updated at least annually.

(c) The State list and accompanying information form the primary basis of the One-Stop consumer reports system that provides for informed customer choice. The list and information must be widely available, through the One-Stop delivery system, to customers seeking information on training outcomes, as well as participants in employment and training activities funded under WIA and other programs.

(1) The State list must be made available to individuals who have been determined eligible for training services under § 663.310.

(2) The State list must also be made available to customers whose training is supported by other One-Stop partners.

§ 663.565 May an eligible training provider lose its eligibility?

(a) Yes. A training provider must deliver results and provide accurate information in order to retain its status as an eligible training provider.

(b) If the provider does not meet the established performance levels, it will be removed from the eligible provider list.

(1) A Local Board must determine, during the subsequent eligibility determination process, whether a provider meets performance levels. If the provider fails to meet such levels, the provider must be removed from the local list.

(2) The designated State agency upon receipt of the performance information accompanying the local list, may remove a provider from the State list if the agency determines the provider failed to meet the levels of performance prescribed under § 663.535(c).

(3) Providers determined to have intentionally supplied inaccurate

information or to have subsequently violated any provision of title I of WIA or these regulations may be removed from the list in accordance with the enforcement provisions of WIA section 122(f). A provider whose eligibility is terminated under these conditions is liable to repay all adult and dislocated worker training funds it received during the period of noncompliance.

(4) The Governor must establish appeal procedures for providers of training to appeal a denial of eligibility under this part according to the requirements of 20 CFR 667.640(b).

§ 663.570 What is the consumer reports system?

The consumer reports system, referred to in WIA as performance information, is the vehicle for informing the customers of the One-Stop delivery system about the performance of training providers in the local area. It is built upon the State list of eligible providers developed through the procedures described in WIA section 122 and this subpart. The consumer reports system must contain the information necessary for an adult or dislocated worker customer to fully understand the options available to him or her in choosing a program of training services. Such program-specific factors may include overall performance, performance for significant customer groups (including wage replacement rates for dislocated workers), performance of specific provider sites, current information on employment and wage trends and projections, and duration of training programs.

§ 663.575 In what ways can a Local Board supplement the information available from the State list?

(a) Local Boards may supplement the information available from the State list by providing customers with additional information to assist in supporting informed customer choice and the achievement of local performance measures (as described in WIA section 136).

(b) This additional information may include:

(1) Information on programs of training services that are linked to occupations in demand in the local area;

(2) Performance and cost information, including program-specific performance and cost information, for the local outlet(s) of multi-site eligible providers; and

(3) Other appropriate information related to the objectives of WIA, which may include the information described in § 663.570.

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

Yes. Individuals may choose any of the eligible providers on the State list. A State may also establish a reciprocal agreement with another State(s) to permit eligible providers of training services in each State to accept individual training accounts provided in the other State. (WIA sections 122(e)(4) and (e)(5).)

§ 663.590 May a community-based organization (CBO) be included on an eligible provider list?

Yes. CBO's may apply and be determined eligible providers of training services, under WIA section 122 and this subpart. As eligible providers, CBO's provide training through ITA's and may also receive contracts for training special participant populations when the requirements of § 663.430 are met.

§ 663.595 What requirements apply to providers of OJT and customized training?

For OJT and customized training providers, One-Stop operators in a local area must collect such performance information as the Governor may require, determine whether the providers meet such performance criteria as the Governor may require, and disseminate a list of providers that have met such criteria, along with the relevant performance information about them, through the One-Stop delivery system. Providers determined to meet the criteria are considered to be identified as eligible providers of training services. These providers are not subject to the other requirements of WIA section 122 or this subpart.

Subpart F—Priority and Special Populations

§ 663.600 What priority must be given to low-income adults and public assistance recipients served with adult funds under title I?

(a) WIA states, in section 134(d)(4)(E), that in the event that funds allocated to a local area for adult employment and training activities are limited, priority for intensive and training services funded with title I adult funds must be given to recipients of public assistance and other low-income individuals in the local area.

(b) Since funding is generally limited, States and local areas must establish criteria by which local areas can determine the availability of funds and the process by which any priority will be applied under WIA section 134(d)(2)(E). Such criteria may include the availability of other funds for providing employment and training-related services in the local area, the needs of the specific groups within the local area, and other appropriate factors.

(c) States and local areas must give priority for adult intensive and training services to recipients of public assistance and other low-income individuals, unless the local area has determined that funds are not limited under the criteria established under paragraph (b) of this section.

(d) The process for determining whether to apply the priority established under paragraph (b) of this section does not necessarily mean that only the recipients of public assistance and other low income individuals may receive WIA adult funded intensive and training services when funds are determined to be limited in a local area. The Local Board and the Governor may establish a process that gives priority for services to the recipients of public assistance and other low income individuals and that also serves other individuals meeting eligibility requirements.

§ 663.610 Does the statutory priority for use of adult funds also apply to dislocated worker funds?

No. The statutory priority applies to adult funds for intensive and training services only. Funds allocated for dislocated workers are not subject to this requirement.

§ 663.620 How do the Welfare-to-Work program and the TANF program relate to the One-Stop delivery system?

(a) The local Welfare-to-Work (WtW) program operator is a required partner in the One-Stop delivery system. 20 CFR part 662 describes the roles of such partners in the One-Stop delivery system and applies to the Welfare-to-Work program operator. WtW programs serve individuals who may also be served by the WIA programs and, through appropriate linkages and referrals, these customers will have access to a broader range of services through the cooperation of the WtW program in the One-Stop system. WtW participants, who are determined to be WIA eligible, and who need occupational skills training may be referred through the One-Stop system to receive WIA training. WIA participants who are also determined WtW eligible, may be referred to the WtW operator for job placement and other WtW assistance.

(b) The local TANF agency is specifically suggested under WIA as an additional partner in the One-Stop system. TANF recipients will have access to more information about employment opportunities and services

when the TANF agency participates in the One-Stop delivery system. The Governor and Local Board should encourage the TANF agency to become a One-Stop partner to improve the quality of services to the WtW and TANF-eligible populations. In addition, becoming a One-Stop partner will ensure that the TANF agency is represented on the Local Board and participates in developing workforce investment strategies that help cash assistance recipients secure lasting employment.

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

Displaced homemakers may be eligible to receive assistance under title I in a variety of ways, including:

(a) Core services provided by the One-Stop partners through the One-Stop delivery system;

(b) Intensive or training services for which an individual qualifies as a dislocated worker/displaced homemaker if the requirements of this part are met;

(c) Intensive or training services for which an individual is eligible if the requirements of this part are met;

(d) Statewide employment and training projects conducted with reserve funds for innovative programs for displaced homemakers, as described in 20 CFR 665.210(f) .

§ 663.640 May a disabled individual whose family does not meet income eligibility criteria under the Act be eligible for priority as a low income adult?

Yes. Even if the family of a disabled individual does not meet the income eligibility criteria, the disabled individual is to be considered a low-income individual if the individual's own income:

(a) Meets the income criteria established in WIA section 101(25)(B); or

(b) Meets the income eligibility criteria for cash payments under any Federal, State or local public assistance program. (WIA section 101(25)(F).)

Subpart G—On-the-Job Training (OJT) and Customized Training

§ 663.700 What are the requirements for on-the-job training (OJT)?

(a) On-the-job training (OJT) is defined at WIA section 101(31). OJT is provided by an employer in the public, private non-profit, or private sector. A contract may be developed between the employer and the local program that provides occupational training for the WIA participant in exchange for the reimbursement of up to 50 percent of the wage rate to compensate for the employer's extraordinary costs. (WIA section 101(31)(B).)

(b) The local program must not contract with an employer who has previously exhibited a pattern of failing to provide OJT participants with continued long-term employment with wages, benefits, and working conditions that are equal to those provided to regular employees who have worked a similar length of time and are doing the same type of work. (WIA section 195(4).)

(c) An OJT contract must be limited to the period of time required for a participant to become proficient in the occupation for which the training is being provided. In determining the appropriate length of the contract, consideration should be given to the skill requirements of the occupation, the academic and occupational skill level of the participant, prior work experience, and the participant's individual employment plan. (WIA section 101(31)(C).)

§ 663.705 What are the requirements for OJT contracts for employed workers?

OJT contracts may be written for eligible employed workers when:

(a) The employee is not earning a self-sufficient wage as determined by Local Board policy;

(b) The requirements in § 663.700 are met; and

(c) The OJT relates to the introduction of new technologies, introduction to new production or service procedures, upgrading to new jobs that require additional skills, workplace literacy, or other appropriate purposes identified by the Local Board.

§ 663.710 What conditions govern OJT payments to employers?

(a) On-the-job training payments to employers are deemed to be compensation for the extraordinary costs associated with training participants and the costs associated with the lower productivity of the participants.

(b) Employers may be reimbursed up to 50 percent of the wage rate of an OJT participant for the extraordinary costs of providing the training and additional supervision related to the OJT. (WIA section 101(31)(B).)

(c) Employers are not required to document such extraordinary costs.

§ 663.715 What is customized training?

Customized training is training:

(a) that is designed to meet the special requirements of an employer (including a group of employers);

(b) that is conducted with a commitment by the employer to employ, or in the case of incumbent workers, continue to employ, an individual on successful completion of the training; and

(c) for which the employer pays for not less than 50 percent of the cost of the training. (WIA section 101(8).)

§ 663.720 What are the requirements for customized training for employed workers?

Customized training of an eligible employed individual may be provided for an employer or a group of employers when:

(a) The employee is not earning a self-sufficient wage as determined by Local Board policy;

(b) The requirements in § 663.715 are met; and

(c) The customized training relates to the purposes described in § 663.705(c) or other appropriate purposes identified by the Local Board.

Subpart H—Supportive Services

§ 663.800 What are supportive services for adults and dislocated workers?

Supportive services for adults and dislocated workers are defined at WIA sections 101(46) and 134(e)(2) and (3). They include services such as transportation, child care, dependent care, housing, and needs-related payments, that are necessary to enable an individual to participate in activities authorized under WIA title I. Local Boards, in consultation with the One-Stop partners and other community service providers, must develop a policy on supportive services that ensures resource and service coordination in the local area, such policy should address procedures for referral to such services, including how such services will be funded when they are not otherwise available from other sources. The provision of accurate information about the availability of supportive services in the local area, as well as referral to such activities, is one of the core services that must be available to adults and dislocated workers through the One-Stop delivery system. (WIA section 134(d)(2)(H).)

§ 663.805 When may supportive services be provided to participants?

(a) Supportive services may only be provided to individuals who are:

(1) Participating in core, intensive or training services; and

(2) Unable to obtain supportive services through other programs providing such services. (WIA section 134(e)(2)(A) and (B).)

(b) Supportive services may only be provided when they are necessary to enable individuals to participate in title I activities. (WIA section 101(46).)

§ 663.810 Are there limits on the amounts or duration of funds for supportive services?

(a) Local Boards may establish limits on the provision of supportive services or provide the One-Stop operator with the authority to establish such limits, including a maximum amount of funding and maximum length of time for supportive services to be available to participants.

(b) Procedures may also be established to allow One-Stop operators to grant exceptions to the limits established under paragraph (a) of this section.

§ 663.815 What are needs-related payments?

Needs-related payments provide financial assistance to participants for the purpose of enabling individuals to participate in training and are one of the supportive services authorized by WIA section 134(e)(3).

§ 663.820 What are the eligibility requirements for adults to receive needs-related payments?

Adults must:

(a) Be unemployed,

(b) Not qualify for, or have ceased qualifying for, unemployment compensation; and

(c) Be enrolled in a program of training services under WIA section 134(d)(4).

§ 663.825 What are the eligibility requirements for dislocated workers to receive needs-related payments?

To receive needs related payments, a dislocated worker must:

(a) Be unemployed, and:

(1) Have ceased to qualify for unemployment compensation or trade readjustment assistance under TAA or NAFTA–TAA; and

(2) Be enrolled in a program of training services under WIA section 134(d)(4) by the end of the 13th week after the most recent layoff that resulted in a determination of the worker's eligibility as a dislocated worker, or, if later, by the end of the 8th week after the worker is informed that a short-term layoff will exceed 6 months; or

(b) Be unemployed and did not qualify for unemployment compensation or trade readjustment assistance under TAA or NAFTA–TAA.

§ 663.830 May needs-related payments be paid while a participant is waiting to start training classes?

Yes. Payments may be provided if the participant has been accepted in a training program that will begin within 30 calender days. The Governor may authorize local areas to extend the 30 day period to address appropriate circumstances.

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

(a) The payment level for adults must be established by the Local Board.

(b) For dislocated workers, payments must not exceed the greater of either of the following levels:

(1) For participants who were eligible for unemployment compensation as a result of the qualifying dislocation, the payment may not exceed the applicable weekly level of the unemployment compensation benefit; or

(2) For participants who did not qualify for unemployment compensation as a result of the qualifying layoff, the weekly payment may not exceed the poverty level for an equivalent period. The weekly payment level must be adjusted to reflect changes in total family income as determined by Local Board policies. (WIA section 134(e)(3)(C).)

PART 664—YOUTH ACTIVITIES UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

Subpart A—Youth Councils

Subpart B—Eligibility for Youth Services

Subpart C—Out-of-School Youth

Subpart D—Youth Program Design, Elements, and Parameters

Subpart E—Concurrent Enrollment

Subpart F—Summer Employment Opportunities

Subpart G—One-Stop Services to Youth

Subpart H—Youth Opportunity Grants

Authority: Sec. 506(c), Pub. L. 105–220; 20 U.S.C. 9276(c)

Subpart A—Youth Councils

§ 664.100 What is the youth council?

(a) The duties and membership requirements of the youth council are described in WIA section 117(h) and 20 CFR 661.335 and 661.340.

(b) The purpose of the youth council is to provide expertise in youth policy and to assist the Local Board in:

(1) Developing and recommending local youth employment and training policy and practice;

(2) Broadening the youth employment and training focus in the community to incorporate a youth development perspective;

(3) Establishing linkages with other organizations serving youth in the local area; and

(4) Taking into account a range issues that can have an impact on the success of youth in the labor market. (WIA sec. 117(h).)

§ 664.110 Who is responsible for oversight of youth programs in the local area?

(a) The Local Board, working with the youth council, is responsible for conducting oversight of local youth programs operated under the Act, to ensure both fiscal and programmatic accountability.

(b) Local program oversight is conducted in consultation with the local area's chief elected official.

(c) The Local Board may delegate its responsibility for oversight of eligible youth providers, as well as other oversight responsibilities, to the youth council, recognizing the advantage of delegating such responsibilities to the youth council whose members have expertise in youth issues. (WIA sec. 117(h)(4).)

Subpart B—Eligibility for Youth Services

§ 664.200 Who is eligible for youth services?

An eligible youth is defined, under WIA section 101(13), as an individual who:

(a) Is age 14 through 21;

(b) Is a low income individual, as defined in the WIA section 101(25); and

(c) Is within one or more of the following categories:

(1) Deficient in basic literacy skills;

(2) School dropout;

(3) Homeless, runaway, or foster child;

(4) Pregnant or parenting;

(5) Offender; or

(6) Is an individual (including a youth with a disability) who requires additional assistance to complete an educational program, or to secure and hold employment. (WIA sec. 101(13).)

§ 664.205 How is the ''deficient in basic literacy skills'' criterion in § 664.200(c)(1) defined and documented?

(a) Definitions and eligibility documentation requirements regarding the ''deficient in basic literacy skills'' criterion in § 664.200(c)(1) may be established at the State or local level. These definitions may establish such criteria as are needed to address State or local concerns, but must include a determination that an individual:

(1) Computes or solves problems, reads, writes, or speaks English at or below grade level 8.9; or

(2) Is unable to compute or solve problems, read, write, or speak English at a level necessary to function on the job, in the individual's family or in society.

(b) In cases where the State Board establishes State policy on this criterion, the policy must be included in the State plan. (WIA secs. 101(13)(C)(i), 101(19).)

§ 664.210 How is the '' . . . requires additional assistance to complete an educational program, or to secure and hold employment'' criterion in § 664.200(c)(6) defined and documented?

Definitions and eligibility documentation requirements regarding the ''requires additional assistance to complete an educational program, or to secure and hold employment'' criterion of § 664.200(c)(6) may be established at the State or local level. In cases where the State Board establishes State policy on this criterion, the policy must be included in the State Plan. (WIA sec. 101(13)(C)(iv).)

§ 664.215 Must youth participants be registered to participate in the youth program?

(a) Yes. All youth participants must be registered.

(b) Registration is the process of collecting information to support a determination of eligibility.

(c) EEO data must be collected on individuals during the registration process.

§ 664.220 Is there an exception to permit youth who are not low-income individuals to receive youth services?

Yes. Up to five percent of youth participants served by youth programs in a local area may be individuals who do not meet the income criterion for eligible youth, provided that they are within one or more of the following categories:

(a) School dropout;

(b) Basic skills deficient, as defined in WIA section 101(4);

(c) Are one or more grade levels below the grade level appropriate to the individual's age;

(d) Pregnant or parenting;

(e) Possess one or more disabilities, including learning disabilities;

(f) Homeless or runaway;

(g) Offender; or

(h) Face serious barriers to employment as identified by the Local Board. (WIA sec. 129(c)(5).)

§ 664.230 Are the eligibility barriers for eligible youth the same as the eligibility barriers for the five percent of youth participants who do not have to meet income eligibility requirements?

No. The barriers listed in § 664.200 and § 664.220 are not the same. Both lists of eligibility barriers include school dropout, homeless or runaway, pregnant or parenting, and offender, but each list contains barriers not included on the other list.

§ 664.240 May a local program use eligibility for free lunches under the National School Lunch Program as a substitute for the income eligibility criteria under the title I of WIA?

No. The criteria for income eligibility under the National School Lunch Program are not the same as the Act's income eligibility criteria. Therefore, the school lunch list may not be used as a substitute for income eligibility to determine who is eligible for services under the Act.

§ 664.250 May a disabled youth whose family does not meet income eligibility criteria under the Act be eligible for youth services?

Yes. Even if the family of a disabled youth does not meet the income eligibility criteria, the disabled youth is to be considered a low-income individual if the youth's own income:

(a) Meets the income criteria established in WIA section 101(25)(B); or

(b) Meets the income eligibility criteria for cash payments under any Federal, State or local public assistance program. (WIA sec. 101(25)(F).)

Subpart C—Out-of-School Youth

§ 664.300 Who is ''out-of-school youth''?

An out-of-school youth is an individual who:

(a) Is an eligible youth who is a school dropout; or

(b) Is an eligible youth who has either graduated from high school or holds a GED, but is basic skills deficient, unemployed, or underemployed. (WIA sec. 101(33).)

§ 664.310 Is youth attending an alternative school a ''dropout''?

No. A school dropout is defined as an individual who is no longer attending any school and who has not received a secondary school diploma or its recognized equivalent. A youth attending an alternative school is not a dropout. (WIA sec. 101(39).)

§ 664.320 Does the requirement that at least 30 percent of youth funds be used to provide activities to out-of-school youth apply to all youth funds?

(a) Yes. The 30 percent requirement applies to the total amount of all funds allocated to a local area under section 128(b)(2)(A) or (b)(3) of WIA.

(b) Although it is not necessary to ensure that 30 percent of such funds spent on summer employment opportunities (or any other particular element of the youth program) are spent on out-of-school youth, the funds spent on these activities are included in the total to which the 30 percent requirement applies.

(c) There is a limited exception, at WIA section 129(c)(4)(B), under which certain small States may apply to the Secretary to reduce the minimum amount that must be spent on out-of-school youth. (WIA sec. 129(c)(4).)

Subpart D—Youth Program Design, Elements, and Parameters

§ 664.400 How must local youth programs be designed?

(a) The design framework of local youth programs must:

(1) Provide an objective assessment of each youth participant, that meets the requirements of WIA section 129(c)(1)(A), and includes a review of the academic and occupational skill levels, as well as the service needs, of each youth;

(2) Develop an individual service strategy for each youth participant that meets the requirements of WIA section 129(c)(1)(B), including identifying a career goal and consideration of the assessment results for each youth; and

(3) Provide preparation for postsecondary educational opportunities, provide linkages between academic and occupational learning, provide preparation for employment, and provide effective connections to intermediary organizations that provide strong links to the job market and employers.

(b) The local plan must describe the design framework for youth program design in the local area, and of how the ten program elements required in § 664.410 of this part are provided within that framework.

(c) Local Boards must ensure appropriate links to entities that will foster the participation of eligible local area youth. Such links may include connections to:

(1) Local area justice and law enforcement officials;

(2) Local public housing authorities;

(3) Local education agencies;

(4) Job Corps representatives; and

(5) Representatives of other area youth initiatives, including those that serve homeless youth and other public and private youth initiatives.

(d) Local Boards must ensure that the referral requirements in WIA section 129(c)(3) for youth who meet the income eligibility criteria are met, including:

(1) Providing these youth with information regarding the full array of applicable or appropriate services available through the Local Board, providers found eligible by the board, or One-Stop partners; and

(2) Referring these youth to appropriate training and educational programs that have the capacity to serve them either on a sequential or concurrent basis.

(e) In order to meet the basic skills and training needs of eligible applicants who do not meet the enrollment requirements of a particular program or who cannot be served by the program, each eligible youth provider must ensure that these youth are referred:

(1) For further assessment, as necessary, and

(2) To appropriate programs, in accordance with paragraph (d)(2) of this section.

(f) Local Boards must ensure that parents, youth participants, and other members of the community with experience relating to youth programs are involved in both the design and implementation of its youth programs.

(g) The objective assessment required under paragraph (a)(1) of this section or the individual service strategy required under paragraph (a)(2) of this section is not required if the program provider determines that it is appropriate to use a recent objective assessment or individual service strategy that was developed under another education or training program. (WIA section 129(c)(1).)

§ 664.410 Must local programs include each of the ten program elements listed in WIA section 129(c)(2) as options available to youth participants?

(a) Yes. Local programs must make the following services available to youth participants:

(1) Tutoring, study skills training, and instruction leading to secondary school completion, including dropout prevention strategies;

(2) Alternative secondary school offerings;

(3) Summer employment opportunities directly linked to academic and occupational learning;

(4) Paid and unpaid work experiences, including internships and job shadowing, as provided in §§ 664.460 and 664.470 of this part;

(5) Occupational skill training;

(6) Leadership development opportunities, which may include such activities as positive social behavior and soft skills, decision making, team work, and other activities, as provided in §§ 664.420 and 664.430 of this part;

(7) Supportive services, which may include the services listed in § 664.440;

(8) Adult mentoring for a duration of at least twelve (12) months, that may occur both during and after program participation;

(9) Followup services, as provided in § 664.450; and

(10) Comprehensive guidance and counseling, including drug and alcohol abuse counseling, as well as referrals to counseling, as appropriate to the needs of the individual youth.

(b) Local programs have the discretion to determine what specific program services will be provided to a youth participant, based on each participant's objective assessment and individual service strategy. (WIA sec. 129(c)(2).)

§ 664.420 What are leadership development opportunities?

Leadership development opportunities for youth may include the following:

(a) Exposure to postsecondary educational opportunities;

(b) Community and service learning projects;

(c) Peer-centered activities, including peer mentoring and tutoring;

(d) Organizational and team work training, including team leadership training;

(e) Training in decision-making, including determining priorities;

(f) Citizenship training, including life skills training such as parenting, work behavior training, and budgeting of resources;

(g) Employability; and

(h) Positive social behaviors. (WIA sec. 129(c)(2)(F).)

§ 664.430 What are positive social behaviors?

Positive social behaviors, often referred to as soft skills, are incorporated by many local programs as part of their menu of services which focus on areas that may include, but are not limited to, the following:

(a) Positive attitudinal development;

(b) Self esteem building;

(c) Cultural diversity training; and

(d) Work simulation activities. (WIA sec. 129(c)(2)(F).)

§ 664.440 What are supportive services for youth?

Supportive services for youth, as defined in WIA section 101(46), may include the following:

(a) Linkages to community services;
(b) Assistance with transportation costs;
(c) Assistance with child care and dependent care costs;
(d) Assistance with housing costs;
(e) Referrals to medical services; and
(f) Assistance with uniforms or other appropriate work attire and work-related tool costs, including such items as eye glasses and protective eye gear. (WIA sec. 129(c)(2)(G).)

§ 664.450 What are followup services for youth?

(a) Followup services for youth may include:
(1) The leadership development and supportive service activities listed in §§ 664.420 and 664.440 of this part;
(2) Regular contact with a youth participant's employer, including assistance in addressing work-related problems that arise;
(3) Assistance in securing better paying jobs, career development and further education;
(4) Work-related peer support groups;
(5) Adult mentoring; and
(6) Tracking the progress of youth in employment after training.
(b) All youth participants must receive some form of followup services for a minimum duration of 12 months. Followup services may be provided beyond twelve (12) months at the State or Local Board's discretion. The types of services provided and the duration of services must be determined based on the needs of the individual. The scope of these followup services may be less intensive for youth who have only participated in summer youth employment opportunities. (WIA sec. 129(c)(2)(I).)

§ 664.460 What are work experiences for youth?

(a) Work experiences are planned, structured learning experiences that take place in a workplace for a limited period of time. As stated in § 664.470, work experiences may be paid or unpaid.
(b) Work experience workplaces may be in the private, for-profit sector; the non-profit sector; or the public sector.
(c) Work experiences are designed to enable youth to gain exposure to the working world and its requirements. Work experiences should help youth acquire the personal attributes, knowledge, and skills needed to obtain a job and advance in employment. The purpose is to provide the youth participant with the opportunities for career exploration and skill development and is not to benefit the employer, although the employer may, in fact, benefit from the activities performed by the youth. Work experiences may be subsidized or unsubsidized and may include the following elements:
(1) Instruction in employability skills or generic workplace skills such as those identified by the Secretary's Commission on Achieving Necessary Skills (SCANS);
(2) Exposure to various aspects of an industry;
(3) Progressively more complex tasks;
(4) Internships and job shadowing;
(5) The integration of basic academic skills into work activities;
(6) Supported work, work adjustment, and other transition activities;
(7) Entrepreneurship; and
(8) Other elements designed to achieve the goals of work experience.
(d) In most cases, on-the-job training is not an appropriate work experiences activity for youth participants under age 18. Local program operators may choose, however, to use this service strategy for eligible youth when it is appropriate based on the needs identified by the objective assessment of an individual youth participant. (WIA sec. 129(c)(2)(D).)

§ 664.470 Are paid work experiences allowable activities?

Funds under the Act may be used to pay wages and related benefits for work experiences in the public; private; for-profit; or non-profit sectors where the objective assessment and individual service strategy indicate that work experiences are appropriate. (WIA sec. 129(c)(2)(D).)

Subpart E—Concurrent Enrollment

§ 664.500 May youth participate in both youth and adult programs concurrently?

(a) Under the Act, eligible youth are 14 through 21 years of age. Adults are defined in the Act as individuals age 18 and older. Thus, individuals ages 18 through 21 may be eligible for both adult and youth programs.
(b) Eligible individuals who are 18 through 21 years old may participate in adult and youth programs concurrently. Such individuals must be eligible under the youth or adult eligibility criteria applicable to the services received. Local program operators may determine, for individuals in this age group, the appropriate level and balance of youth and/or adult services.
(c) Local program operators must identify and track the funding streams which pay the costs of services provided to individuals who are participating in youth and adult programs concurrently, and ensure that services are not duplicated.

§ 664.510 Are Individual Training Accounts allowed for youth participants?

No. However, individuals age 18 and above, who are eligible for training services under the adult and dislocated worker program, may receive Individual Training Accounts through that program. Requirements for concurrent participation requirements are set forth in § 664.500 of this part. To the extent possible, in order to enhance youth participant choice, youth participants should be involved in the selection of educational and training activities.

Subpart F—Summer Employment Opportunities

§ 664.600 Are Local Boards required to offer summer employment opportunities in the local youth program?

(a) Yes. Local Boards are required to offer summer youth employment opportunities that link academic and occupational learning as part of the menu of services required in § 664.410(a).
(b) Summer youth employment must provide direct linkages to academic and occupational learning, and may provide other elements and strategies as appropriate to serve the needs and goals of the participants.
(c) Local Boards may determine how much of available youth funds will be used for summer and for year-round youth activities.
(d) The summer youth employment opportunities element is not intended to be a stand-alone program. Local programs should integrate a youth's participation in that element into a comprehensive strategy for addressing the youth's employment and training needs. Youths who participate in summer employment opportunities must be provided with a minimum of twelve months of followup services, as required in § 664.450. (WIA sec. 129(c)(2)(C).)

§ 664.610 How is the summer employment opportunities element administered?

Chief elected officials and Local Boards are responsible for ensuring that the local youth program provides summer employment opportunities to youth. The chief elected officials are the grant recipients for local youth funds, unless another entity is chosen to be grant recipient or fiscal agent under WIA section 117(d)(3)(B). If, in the administration of the summer employment opportunities element of the local youth program, providers other than the grant recipient/fiscal agent are used to provide summer youth employment opportunities, these providers must be selected by awarding a grant or contract on a competitive

basis, based on the recommendation of the youth council and on criteria contained in the State Plan. (WIA sec. 129(c)(2)(C).)

§ 664.620 Do the core indicators described in 20 CFR 666.100(a)(3) apply to participation in summer employment activities?

Yes. The summer employment opportunities element is one of a number of activities authorized by the WIA youth program. The law provides specific core indicators of performance for youth, and requires that all participating youth be included in the determination of whether the local levels of performance are met. Program operators can help ensure positive outcomes for youth participants by providing them with continuity of services.

Subpart G—One-Stop Services to Youth

§ 664.700 What is the connection between the youth program and the One-Stop service delivery system?

(a) The chief elected official (or designee under WIA section 117(d)(3)(B)), as the local grant recipient for the youth program is a required One-Stop partner and is subject to the requirements that apply to such partners, described in 20 CFR part 662.

(b) In addition to the provisions of 20 CFR part 662, connections between the youth program and the One-Stop system may include those that facilitate:

(1) The coordination and provision of youth activities;

(2) Linkages to the job market and employers;

(3) Access for eligible youth to the information and services required in §§ 664.400 and 664.410 of this part; and

(4) Other activities designed to achieve the purposes of the youth program and youth activities as described in WIA section 129(a). (WIA secs. 121(b)(1)(B)(i); 129.)

§ 664.710 Do Local Boards have the flexibility to offer services to area youth who are not eligible under the youth program through the One-Stop centers?

Yes. However, One-Stop services for non-eligible youth must be funded by programs that are authorized to provide services to such youth. For example, basic labor exchange services under the Wagner-Peyser Act may be provided to any youth.

Subpart H—Youth Opportunity Grants

§ 664.800 How are the recipients of Youth Opportunity Grants selected?

(a) Youth Opportunity Grants are awarded through a competitive selection process. The Secretary establishes appropriate application procedures, selection criteria, and an approval process for awarding Youth Opportunity Grants to accomplish the purpose of the Act and use available funds in an effective manner in the Solicitation for Grant Applications announcing the competition.

(b) The Secretary distributes grants equitably among urban and rural areas by taking into consideration such factors as the following:

(1) The poverty rate in urban and rural communities;

(2) The number of people in poverty in urban and rural communities; and

(3) The quality of proposals received. (WIA sec.169(a) and (e).)

§ 664.810 How does a Local Board or other entity become eligible to receive a Youth Opportunity Grant?

(a) A Local Board is eligible to receive a Youth Opportunity Grant if it serves a community that:

(1) Has been designated as an empowerment zone (EZ) or enterprise community (EC) under section 1391 of the Internal Revenue Code of 1986;

(2) Is located in a State that does not have an EZ or an EC and that has been designated by its Governor as a high poverty area; or

(3) Is one of two areas in a State that has been designated by the Governor as an area for which a local board may apply for a Youth Opportunity Grant, and that meets the poverty rate criteria in sections 1392 (a)(4), (b), and (d) of the Internal Revenue Code of 1986.

(b) An entity other than a Local Board is eligible to receive a grant if that entity:

(1) Is a WIA Indian and Native American grant recipient under WIA sec. 166; and

(2) Serves a community that:

(i) Meets the poverty rate criteria in sections 1392(a)(4), (b), and (d) of the Internal Revenue Code of 1986; and

(ii) Is located on an Indian reservation or serves Oklahoma Indians or Alaska Native villages or Native groups, as provided in WIA section 169 (d)(2)(B). (WIA sec. 169(c) and (d).)

§ 664.820 Who is eligible to receive services under Youth Opportunity Grants?

All individuals ages 14 through 21 who reside in the community identified in the grant are eligible to receive services under the grant. (WIA sec. 169(a).)

§ 664.830 How are performance measures for Youth Opportunity Grants determined?

(a) The Secretary negotiates performance measures, including appropriate performance levels for each indicator, with each selected grantee, based on information contained in the application.

(b) Performance indicators for the measures negotiated under Youth Opportunity Grants are the indicators of performance provided in WIA sections. 136 (b)(2)(A) and (B). (WIA sec. 169(f).)

PART 665—STATEWIDE WORKFORCE INVESTMENT ACTIVITIES UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

Subpart A—General Description

Subpart B—Required and Allowable Statewide Workforce Investment Activities

Subpart C—Rapid Response Activities

Authority: Section 506(c), Pub. L. 105–220; 20 USC 9276(c)

Subpart A—General Description

§ 665.100 What are the Statewide workforce investment activities under title I of WIA?

Statewide workforce investment activities include Statewide employment and training activities for adults and dislocated workers, as described in WIA section 134(a), and Statewide youth activities, as described in WIA section 129 (b). They include both required and allowable activities. In accordance with the requirements of this subpart, the State may develop policies and strategies for use of Statewide workforce investment funds. Descriptions of these policies and strategies must be included in the State Plan. (WIA secs. 129(b); 134(a).)

§ 665.110 How are Statewide workforce investment activities funded?

(a) Except for the Statewide rapid response activities described in paragraph (c) of this section, Statewide workforce investment activities are

supported by funds reserved by the Governor under WIA section 128(a).

(b) Funds reserved by the Governor for Statewide workforce investment activities may be combined and used for any of the activities authorized in WIA secstions 129(b), 134(a)(2)(B) or 134(a)(3)(A) (which are described in §§ 665.200 and 665.210), regardless of whether the funds were allotted through the youth, adult, or dislocated worker funding streams.

(c) Funds for Statewide rapid response activities are reserved under WIA sec. 133(a)(2) and may be used to provide the activities authorized at sec. 134(a)(2)(A) (which are described in §§ 665.310 to 665.330 of this part). (WIA secs 129(b); 133(a)(2); 134(a)(2)(B); and 134(a)(3)(A).)

Subpart B—Required and Allowable Statewide Workforce Investment Activities

§ 665.200 What are required Statewide workforce investment activities?

Required Statewide workforce investment activities are:

(a) Required rapid response activities, as described in § 665.310 of this part;

(b) Disseminating:

(1) The State list of eligible providers of training services (including those providing non-traditional training services), for adults and dislocated workers;

(2) Information identifying eligible providers of on-the-job training and customized training;

(3) Performance and program cost information about these providers, as described in 20 CFR 663.540; and

(4) A list of eligible providers of youth activities as described in WIA section 123;

(c) Conducting evaluations, under WIA section 136(e), of workforce investment activities for adults, dislocated workers and youth, in order to establish and promote methods for continuously improving such activities to achieve high-level performance within, and high-level outcomes from, the Statewide workforce investment system. Such evaluations must be conducted in coordination with local boards in the State and, to the maximum extent practicable, in coordination with Federal evaluations carried out under WIA section 172.

(d) Providing incentive grants:

(1) To local areas for regional cooperation among local boards (including local boards for a designated region, as described in 20 CFR 661.290);

(2) For local coordination of activities carried out under WIA; and

(3) For exemplary performance by local areas on the performance measures.

(e) Providing technical assistance to local areas that fail to meet local performance measures.

(f) Assisting in the establishment and operation of One-Stop delivery systems, in accordance with the strategy described in the State workforce investment plan. [WIA sec. 112(b)(14).]

(g) Providing additional assistance to local areas that have high concentrations of eligible youth.

(h) Operating a fiscal and management accountability information system, based on guidelines established by the Secretary after consultation with the Governors, chief elected officials, and One-Stop partners, as required by WIA section 136(f). (WIA secs. 129(b)(2) and 134(a)(2).)

§ 665.210 What are allowable Statewide workforce investment activities?

Allowable Statewide workforce investment activities include:

(a) State administration of the adult, dislocated worker and youth workforce investment activities, consistent with the five percent administrative cost limitation at 20 CFR 667.210(a)(1).

(b) Providing capacity building and technical assistance to local areas, including Local Boards, One-Stop operators, One-Stop partners, and eligible providers, which may include:

(1) Staff development and training; and

(2) The development of exemplary program activities.

(c) Conducting research and demonstrations.

(d) Establishing and implementing innovative incumbent worker training programs, which may include an employer loan program to assist in skills upgrading, and programs targeted to empowerment zones and enterprise communities.

(e) Providing support to local areas for the identification of eligible training providers.

(f) Implementing innovative programs for displaced homemakers, and programs to increase the number of individuals trained for and placed in non-traditional employment.

(g) Carrying out adult and dislocated worker employment and training activities as the State determines are necessary to assist local areas in carrying out local employment and training activities.

(h) Carrying out youth activities Statewide.

(i) Preparation and submission to the Secretary of the annual performance progress report as described in 20 CFR 667.300(e). (WIA secs. 129(b)(3) and 134(a)(3).)

§ 665.220 Who is an "incumbent worker" for purposes of Statewide workforce investment activities?

States may establish policies and definitions to determine which workers are eligible for incumbent worker services under this subpart. An incumbent worker is an individual who is employed, but an incumbent worker does not necessarily have to meet the eligibility requirements for intensive and training services for employed adults and dislocated workers at 20 CRF 663.220(a)(2) and 663.310. (WIA sec. 134(a)(3)(A)(iv)(I).)

Subpart C—Rapid Response Activities

§ 665.300 What are rapid response activities and who is responsible for providing them?

(a) Rapid response activities are described in §§ 665.310 through 665.330 of this part. They encompass the activities necessary to plan and deliver services to enable dislocated workers to transition to new employment as quickly as possible, following either a permanent closure or mass layoff, or a natural or other disaster resulting in a mass job dislocation.

(b) The State is responsible for providing rapid response activities. Rapid response is a required activity carried out in local areas by the State, or an entity designated by the State, in conjunction with the Local Board and chief elected officials. The State must establish methods by which to provide additional assistance to local areas that experience disasters, mass layoffs, plant closings, or other dislocation events when such events substantially increase the number of unemployed individuals.

(c) States must establish a rapid response dislocated worker unit to carry out Statewide rapid response activities. (WIA secs. 101(38), 112(b)(17)(A)(ii) and 134(a)(2)(A).)

§ 665.310 What rapid response activities are required?

Rapid response activities must include:

(a) On-site contact with the employer, representatives of the affected workers, and the local community, which may include an assessment of the:

(1) Layoff plans and schedule of the employer;

(2) Potential for averting the layoff(s) in consultation with State or local economic development agencies, including private sector economic development entities;

(3) Background and probable assistance needs of the affected workers;

(4) Reemployment prospects for workers in the local community; and

(5) Available resources to meet the short and long-term assistance needs of the affected workers;

(b) The provision of information and access to unemployment compensation benefits, comprehensive One-Stop system services, and employment and training activities, including information on the Trade Adjustment Assistance program and the NAFTA–TAA program;

(c) The provision of guidance and/or financial assistance in establishing a labor-management committee voluntarily agreed to by labor and management, or a workforce transition committee comprised of representatives of the employer, the affected workers and the local community. The committee may devise and oversee an implementation strategy that responds to the reemployment needs of the workers. The assistance to this committee may include:

(1) The provision of training and technical assistance to members of the committee;

(2) Funding the operating costs of a committee to enable it to provide advice and assistance in carrying out rapid response activities and in the design and delivery of WIA-authorized services to affected workers. Typically, such support will last no longer than six months; and

(3) Providing a list of potential candidates to serve as a neutral chairperson of the committee.

(d) The provision of emergency assistance adapted to the particular closing, layoff or disaster.

(e) The provision of assistance to the local board and chief elected official(s) to develop a coordinated response to the dislocation event and, as needed, obtain access to State economic development assistance. Such coordinated response may include the development of an application for National Emergency Grant under 20 CFR part 671. (WIA secs. 101(38) and 134(a)(2)(A).)

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

Yes. A State or designated entity may provide additional rapid response activities in addition to the activities required to be provided under § 665.310. In order to provide effective rapid response upon notification of a permanent closure or mass layoff, or a natural or other disaster resulting in a mass job dislocation, the State or designated entity may:

(a) In conjunction, with other appropriate Federal, State and Local agencies and officials, employer associations, technical councils or other industry business councils, and labor organizations:

(1) Develop prospective strategies for addressing dislocation events, that ensure rapid access to the broad range of allowable assistance;

(2) Identify strategies for the aversion of layoffs; and

(3) Develop and maintain mechanisms for the regular exchange of information relating to potential dislocations, available adjustment assistance, and the effectiveness of rapid response strategies.

(b) In collaboration with the appropriate State agency(ies), collect and analyze information related to economic dislocations, including potential closings and layoffs, and all available resources in the State for dislocated workers in order to provide an adequate basis for effective program management, review and evaluation of rapid response and layoff aversion efforts in the State.

(c) Participate in capacity building activities, including providing information about innovative and successful strategies for serving dislocated workers, with local areas serving smaller layoffs.

(d) Assist in devising and overseeing strategies for:

(1) Layoff aversion, such as prefeasibility studies of avoiding a plant closure through an option for a company or group, including the workers, to purchase the plant or company and continue it in operation;

(2) Incumbent worker training, including employer loan programs for employee skill upgrading; and

(3) Linkages with economic development activities at the Federal, State and local levels, including Federal Department of Commerce programs and available State and local business retention and recruitment activities.

§ 665.330 Are the NAFTA/TAA requirements for rapid response also required activities?

The Governor must ensure that rapid response activities under WIA are made available to workers who, under the NAFTA Worker Security Act (Pub. L. 103–182), are members of a group of workers (including those in any agricultural firm or subdivision of an agricultural firm) for which the Governor has made a finding that:

(a) The sales or production, or both, of such firm or subdivision have decreased absolutely, and

(b)(1) Imports from Mexico or Canada of articles like or directly competitive with those produced by such firm or subdivision have increased; or

(2) There has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles which are produced by the firm or subdivision.

PART 666—PERFORMANCE ACCOUNTABILITY UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

Subpart A—State Measures of Performance

Sec.

Subpart B—Incentives and Sanctions for State Performance

Subpart C—Local Measures of Performance

Subpart D—Incentives and Sanctions for Local Performance

Authority: Sec. 506(c), Pub. L. 105–220; 20 U.S.C. 9276(c).

Subpart A—State Measures of Performance

§ 666.100 What performance indicators must be included in a State's plan?

(a) All States submitting a State Plan under WIA title I, subtitle B must propose expected levels of performance for each of the core indicators of performance for the adult, dislocated worker and youth programs, respectively and the two customer satisfaction indicators.

(1) For the Adult program, these indicators are:

(i) Entry into unsubsidized employment;

(ii) Retention in unsubsidized employment six months after entry into the employment;

(iii) Earnings received in unsubsidized employment six months after entry into the employment; and

(iv) Attainment of a recognized credential related to achievement of educational skills (such as a secondary school diploma or its recognized equivalent), or occupational skills, by participants who enter unsubsidized employment.

(2) For the Dislocated Worker program, these indicators are:

(i) Entry into unsubsidized employment;

(ii) Retention in unsubsidized employment six months after entry into the employment;

(iii) Earnings received in unsubsidized employment six months after entry into the employment; and

(iv) Attainment of a recognized credential related to achievement of educational skills (such as a secondary school diploma or its recognized equivalent), or occupational skills, by participants who enter unsubsidized employment.

(3) For the Youth program, these indicators are:

(i) For eligible youth aged 14 through 18:

(A) Attainment of basic skills, and, as appropriate, work readiness or occupational skills;

(B) Attainment of secondary school diplomas and their recognized equivalents; and

(C) Placement and retention in postsecondary education, advanced training, military service, employment, or qualified apprenticeships.

(ii) For eligible youth aged 19 through 21:

(A) Entry into unsubsidized employment;

(B) Retention in unsubsidized employment six months after entry into the employment;

(C) Earnings received in unsubsidized employment six months after entry into the employment; and

(D) Attainment of a recognized credential related to achievement of educational skills (such as a secondary school diploma or its recognized equivalent), or occupational skills, by participants who enter post-secondary education, advanced training, or unsubsidized employment.

(4) A single customer satisfaction measure for employers and a single customer satisfaction indicator for participants must be used for the WIA title I, subtitle B programs for adults, dislocated workers and youth. (WIA sec. 136(b)(2).)

(b) After consultation with the representatives identified in WIA secs. 136(i) and 502(b), the Departments of Labor and Education will issue definitions for the performance indicators established under title I and title II of WIA. (WIA secs. 136(b), (f) and (i).)

§ 666.110 May a Governor require additional indicators of performance?

Yes. Governors may develop additional indicators of performance for adults, youth and dislocated worker activities. These indicators must be included in the State Plan. (WIA sec. 136(b)(2)(C).)

§ 666.120 What are the procedures for negotiating annual levels of performance?

(a) The Department issues instructions on the specific information that must accompany the State Plan and that is used to review the State's expected levels of performance. The instructions may require that levels of performance for years two and three be expressed as a percentage improvement over the immediately preceding year's actual performance, consistent with the objective of continuous improvement.

(b) States must submit expected levels of performance for the required indicators for each of the first three program years covered by the Plan.

(c) The Secretary and the Governor must reach agreement on levels of performance for each core indicator and the customer satisfaction indicators. In negotiating these levels, the following must be taken into account:

(1) The expected levels of performance identified in the State Plan;

(2) The extent to which the levels of performance for each core indicator assist in achieving high customer satisfaction;

(3) The extent to which the levels of performance promote continuous improvement and ensure optimal return on the investment of Federal funds; and

(4) How the levels compare with those of other States, taking into account factors including differences in economic conditions, participant characteristics, and the proposed service mix and strategies.

(d) The levels of performance agreed to under paragraph (c) of this section will be the State's adjusted levels of performance for the first three years of the State Plan. These levels will used to determine whether sanctions will be applied or incentive grant funds will be awarded.

(e) Before the fourth year of the State Plan, the Secretary and the Governor must reach agreement on levels of performance for each core indicator and the customer satisfaction indicators for the fourth and fifth years covered by the plan. In negotiating these levels, the factors listed in paragraph (c) of this section must be taken into account.

(f) The levels of performance agreed to under paragraph (e) of this section will be the State adjusted levels of performance for the fourth and fifth years of the plan and must be incorporated into the State Plan.

(g) Levels of performance for the additional indicators developed by the Governor are considered to be State adjusted levels of performance, but are not part of the negotiations described in paragraphs (c) and (e) of this section. (WIA sec. 136(b)(3).)

(h) State adjusted levels of performance may be revised in accordance with § 666.130 of this subpart.

§ 666.130 Under what conditions may a State or DOL request revisions to the State adjusted levels of performance?

(a) The DOL guidelines describe when and under what circumstances a Governor may request revisions to negotiated levels. These circumstances include significant changes in economic conditions, in the characteristics of participants entering the program, or in the services to be provided from when the initial plan was submitted and approved. (WIA sec. 136(b)(3)(A)(vi).)

(b) The guidelines will establish the circumstances under which a State will be required to submit revisions under specified circumstances.

§ 666.140 Which individuals receiving services are included in the core indicators of performance?

(a) The core indicators of performance apply to all individuals who are registered under 20 CFR 663.105 and 664.215 for the adult, dislocated worker and youth programs, except for those adults and dislocated workers who participate exclusively in self-service or

informational activities. (WIA sec. 136(b)(2)(A).)

(b) For registered participants, a standardized record that includes appropriate performance information must be maintained in accordance with WIA section 185(a)(3).

§ 666.150 What responsibility do States have to use quarterly wage record information for performance accountability?

(a) States must, consistent with State law, use quarterly wage record information in measuring the progress on State and local performance measures.

(b) The State must include in the State Plan a description of the State's performance accountability system, and a description of the State's strategy for using quarterly wage record information to measure the progress on State and local performance measures. The description must identify the entities that may have access to quarterly wage record information for this purpose.

(c) ''Quarterly wage record information'' means information regarding wages paid to an individual, the social security account number (or numbers, if more than one) of the individual and the name, address, State, and (when known) the Federal employer identification number of the employer paying the wages to the individual. (WIA sec. 136(f)(2).)

Subpart B—Incentives and Sanctions for State Performance

§ 666.200 Under what circumstances is a State eligible for an Incentive Grant?

A State is eligible to apply for an Incentive Grant if its performance for the immediately preceding year exceeds:

(a) The State's adjusted levels of performance for the required core indicators for the adult, dislocated worker and youth programs under title I of WIA as well as the customer satisfaction indicators for WIA title I programs;

(b) The adjusted levels of performance included in plans submitted to the Department of Education for title II Adult Education and Literacy programs; and

(c) The adjusted levels of performance under title I of the Carl D. Perkins Vocational and Technical Education Act (20 U.S.C. 2301 *et seq.*). (WIA sec. 503.)

§ 666.205 What are the time frames under which States submit performance progress reports and apply for incentive grants?

(a) State performance progress reports must be filed by the due date established in reporting instructions issued by the Department.

(b) Based upon the reports filed under paragraph (a) of this section, the Secretary will determine the amount of funds available, under WIA title I, to each eligible State for incentive grants, in accordance with the criteria of § 666.230. The award amounts for each eligible State will be published by the Secretary, after consultation with the Secretary of Education, within ninety (90) days after the due date for performance progress reports established under paragraph (a) of this section.

(c) Within forty-five (45) days of the publication of award amounts under paragraph (b) of this section, States may apply for incentive grants in accordance with the requirements of § 666.220.

§ 666.210 How may Incentive Grant funds be used?

Incentive grant funds are awarded to States to carry out any one or more innovative programs under titles I or II of WIA or the Carl D. Perkins Vocational and Technical Education Act, regardless of which Act is the source of the incentive funds. (WIA section 503(a).)

§ 666.220 What information must be included in State Board's application for an Incentive Grant?

(a) The Secretary of Labor, after consultation with the Secretary of Education, will issue instructions annually which will include the amount of funds available to be awarded for each State and provide instructions for submitting applications for an Incentive Grant.

(b) Each State desiring an incentive grant must submit to the Secretary an application, developed by the State Board, containing the following assurances:

(1) The State legislature was consulted regarding the development of the application.

(2) The application was approved by the Governor, the eligible agency (as defined in WIA section 203), and the State agency responsible for vocational and technical programs under the Carl D. Perkins Vocational and Technical Education Act.

(3) The State exceeded the State adjusted levels of performance for title I, the adjusted levels of performance under title II and the adjusted levels for vocational and technical programs under the Carl D. Perkins Vocational and Technical Education Act. (WIA section 503(b).)

§ 666.230 How does the Department determine the amounts for Incentive Grant awards?

(a) DOL determines the total amount to be allocated from funds available under WIA section 174(b) for Incentive Grants taking into consideration such factors as:

(1) The availability of funds under section 174(b) for technical assistance, demonstration and pilot projects, evaluations, and Incentive Grants and the needs for these activities;

(2) The number of States that are eligible for Incentive Grants and their relative program formula allocations under title I;

(3) The availability of funds under WIA section 136(g)(2) resulting from funds withheld for poor performance by States; and

(4) The range of awards established in WIA section 503(c).

(b) The award amount for eligible States will be published by the Secretary of Labor, after consultation with the Secretary of Education, within 90 days after the due date established under § 666.205(a) of the latest State performance progress report providing the annual information needed to determine State eligibility.

(c) In determining the amount available to an eligible State, the Secretary, with the Secretary of Education, may consider such factors as:

(1) The relative allocations of the eligible State compared to other States;

(2) The extent to which the adjusted levels of performance were exceeded;

(3) Performance improvement relative to previous years;

(4) Changes in economic conditions, participant characteristics and proposed service design since the adjusted levels of performance were negotiated;

(5) The eligible State's relative performance for each of the indicators compared to other States; and

(6) The performance on those indicators considered most important in terms of accomplishing national goals established by each of the respective Secretaries.

§ 666.240 Under what circumstances may a sanction be applied to a State that fails to achieve adjusted levels of performance for title I?

(a) If a State fails to meet the adjusted levels of performance agreed to under § 666.120 for core indicators of performance or customer satisfaction indicators for the adult, dislocated worker or youth program under title I of WIA, the Secretary must, upon request, provide technical assistance, as authorized under WIA sections 136(g) and 170.

(b) If a State fails to meet the adjusted levels of performance for core indicators of performance or customer satisfaction indicators for the same program in two successive years, the amount of the succeeding year's allocation for the applicable program may be reduced by up to five percent.

(c) The exact amount of any allocation reduction will be based upon the degree of failure to meet the adjusted levels of performance for core indicators. In making a determination of the amount, if any, of such a sanction, the Department may consider factors such as:

(1) The State's performance relative to other States;

(2) Improvement efforts underway;

(3) Incremental improvement on the performance measures;

(4) Technical assistance previously provided;

(5) Changes in economic conditions and program design;

(6) The characteristics of participants served compared to the participant characteristics described in the State Plan; and

(7) Performance on other core indicators of performance and customer satisfaction indicators for that program. (WIA section 136(g).)

(d) In accordance with 20 CFR 667.300(e), a State grant may be reduced for failure to submit an annual performance progress report.

(e) A State may request review of a sanction imposed by the Department in accordance with the provisions of 20 CFR 667.800.

Subpart C—Local Measures of Performance

§ 666.300 What performance indicators apply to local areas?

(a) Each local workforce investment area in a State is subject to the same core indicators of performance and the customer satisfaction indicators that apply to the State under § 666.100(a).

(b) In addition to the indicators described in paragraph (a) of this section, under § 666.110 of this part, the Governor may apply additional indicators of performance to local areas in the State. (WIA sec. 136(c)(1).)

§ 666.310 What levels of performance apply to the indicators of performance in local areas?

(a) The Local Board and the chief elected official must negotiate with the Governor and reach agreement on the local levels of performance for each indicator identified in § 666.300 of this subpart. The levels must be based on the State adjusted levels of performance established under § 666.120 and take into account the factors described in paragraph (b) of this section.

(b) In determining the appropriate local levels of performance, the Governor, Local Board and chief elected official must take into account specific economic, demographic and other characteristics of the populations to be served in the local area.

(c) The performance levels agreed to under paragraph (a) of this section must be incorporated in the local plan. (WIA secs. 118(b)(3) and 136(c).)

Subpart D—Incentives and Sanctions for Local Performance

§ 666.400 Under what circumstances are local areas eligible for State Incentive Grants?

(a) States must use a portion of the funds reserved for Statewide workforce investment activities under WIA sections 128(a) and 133(a)(1) to provide Incentive Grants to local areas for regional cooperation among local boards (including local boards for a designated region as described in WIA section 116(c)), for local coordination of activities carried out under this Act, and for exemplary performance on the local performance measures established under subpart C of this part.

(b) The amount of funds used for Incentive Grants under paragraph (a) of this section and the criteria used for determining exemplary local performance levels to qualify for the incentive grants are determined by the Governor. (WIA sec. 134(a)(2)(B)(iii).)

§ 666.410 How may local incentive awards be used?

The local incentive grant funds may be used for any activities allowed under WIA title I–B.

§ 666.420 Under what circumstances may a sanction be applied to local areas for poor performance?

(a) If a local area fails to meet the levels of performance agreed to under § 666.310 for the core indicators of performance or customer satisfaction indicators for a program in any program year, technical assistance must be provided. The technical assistance must be provided by the Governor with funds reserved for Statewide workforce investment activities under WIA sections 128(a) and 133(a)(1), or, upon the Governor's request, by the Secretary. The technical assistance may include the development of a performance improvement plan, a modified local plan, or other actions designed to assist the local area in improving performance.

(b) If a local area fails to meet the levels of performance agreed to under § 666.310 for the core indicators of performance or customer satisfaction indicators for a program for two consecutive program years, the Governor must take corrective actions. The corrective actions may include the development of a reorganization plan under which the Governor:

(1) Requires the appointment and certification of a new Local Board;

(2) Prohibits the use of particular service providers or One-Stop partners that have been identified as achieving poor levels of performance; or

(3) Requires other appropriate measures designed to improve the performance of the local area.

(c) A local area may appeal to the Governor to rescind or revise a reorganization plan imposed under paragraph (b) of this section not later than thirty (30) days after receiving notice of the plan. The Governor must make a final decision within 30 days after receipt of the appeal. The Governor's final decision may be appealed by the Local Board to the Secretary under 20 CFR 667.650(b) not later than thirty (30) days after the local areas receives the decision. The decision by the Governor to impose a reorganization plan becomes effective at the time it is issued, and remains effective unless the Secretary rescinds or revises the reorganization plan. Upon receipt of the appeal from the local area, the Secretary must make a final decision within thirty (30) days. (WIA sec. 136(h).)

PART 667—ADMINISTRATIVE PROVISIONS UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

Subpart A—Funding

Sec.

Authority: Sec. 506(c), Pub. L. 105–220; 20 U.S.C. 9276(c).

Subpart A—Funding

§ 667.100 When do Workforce Investment Act grant funds become available?

(a) *Program year.* Except as provided in paragraph (b) of this section, fiscal year appropriations for programs and activities carried out under title I of WIA are available for obligation on the basis of a program year. A program year begins on July 1 in the fiscal year for which the appropriation is made and ends on June 30 of the following year.

(b) *Youth fund availability.* Fiscal year appropriations for a program year's youth activities, authorized under chapter 4, subtitle B, title I of WIA, may be made available for obligation beginning on April 1 of the fiscal year for which the appropriation is made.

§ 667.105 What award document authorizes the expenditure of Workforce Investment Act funds under title I of the Act?

(a) *Agreement.* All WIA title I funds that are awarded by grant, contract or cooperative agreement are issued under an agreement between the Grant Officer/Contracting Officer and the recipient. The agreement describes the terms and conditions applicable to the award of WIA title I funds.

(b) *Grant funds awarded to States.* Under the Governor/Secretary Agreement described in § 667.110, each program year, the grant agreement described in paragraph (a) of this section will be executed and signed by the Governor or the Governor's designated representative and Secretary or the Grant Officer. The grant agreement and associated Notices of Obligation are the basis for Federal obligation of funds allotted to the States in accordance with WIA sections 127(b) and 132(b) for each program year.

(c) *Indian and Native American Programs.* Awards of grants, contracts or cooperative agreements for the WIA Indian and Native American program will be made to eligible entities on a competitive basis every two program years for a two-year period, in accordance with the provisions of 20 CFR part 668. An award for the succeeding two-year period may be made to the same recipient on a non-competitive basis if the recipient:

(1) Has performed satisfactorily; and

(2) Submits a satisfactory two-year program plan for the succeeding two-year grant, contract or agreement period.

(d) *Migrant and Seasonal Farmworker Programs.* (1) Awards of grants or contracts for the Migrant and Seasonal Farmworker program will be made to eligible entities on a competitive basis every two program years for a two-year

period, in accordance with the provisions of 20 CFR part 669. An award for the succeeding two-year period may be made to the same recipient if the recipient:

(i) Has performed satisfactorily; and (ii) Submits a satisfactory two-year program plan for the succeeding two-year period.

(2) A grant or contract may be renewed under the authority of paragraph (d)(1) of this section no more than once during any four-year period for any single recipient.

(e) *Job Corps.* (1) Awards of contracts will be made on a competitive basis between the Contracting Officer and eligible entities to operate contract centers and provide operational support services.

(2) The Secretary may enter into interagency agreements with Federal agencies for funding, establishment, and operation of Civilian Conservation Centers for Job Corps programs.

(f) *Youth Opportunity Grants.* Awards of grants for Youth Opportunity programs will be made to eligible Local Boards and eligible entities for a one-year period. The grants may be renewed for each of the four succeeding years based on criteria that include successful performance.

(g) *Awards under WIA secs. 171 and 172.* (1) Awards of grants, contracts or cooperative agreements will be made to eligible entities for programs or activities authorized under WIA sections 171 or 172. These funds are for:

(i) Demonstration;

(ii) Pilot;

(iii) Multi-service;

(iv) Research;

(v) Multi-State projects; and

(vi) Evaluations

(2) Grants and contracts under paragraphs (g)(1)(i) and (ii) of this section will be awarded on a competitive basis, except that a noncompetitive award may be made in the case of a project that is funded jointly with other public or private entities that provide a portion of the funding.

(3) Contracts and grants under paragraphs (g)(1)(iii), (iv), and (v) of this section in amounts that exceed $100,000 will be awarded on a competitive basis, except that a noncompetitive award may be made in the case of a project that is funded jointly with other public or private sector entities that provide a substantial portion of the assistance under the grant or contract for the project.

(4) Grants or contracts for carrying out projects in paragraphs (g)(1)(iii), (iv), and (v) of this section may not be awarded to the same organization for more than three consecutive years, unless the project is competitively reevaluated within that period.

(5) Entities with nationally recognized expertise in the methods, techniques and knowledge of workforce investment activities will be provided priority in awarding contracts or grants for the projects under paragraphs (g)(1)(iii), (iv), and (v) of this section.

(6) A peer review process will be used for projects under paragraphs (g)(1)(iii), (iv), and (v) of this section for grants that exceed $500,000, and to designate exemplary and promising programs.

(h) *Termination.* Each grant terminates when the period of fund availability has expired. The grant must be closed in accordance with the closeout provisions at 29 CFR 95.71 or 97.50, as appropriate.

§ 667.107 What is the period of availability for expenditure of WIA funds?

(a) *Grant funds expended by States.* Funds allotted to States under WIA sections 127(b) and 132(b), for any program year are available for expenditure by the State receiving the funds only during that program year and the two succeeding program years.

(b) *Grant funds expended by local areas.* (1) Funds allocated by a State to a local area under WIA section 128(b) and 133(b), for any program year are available for expenditure only during that program year and the succeeding program year.

(2) Funds which are not expended by a local area in the two-year period described in paragraph (b)(1) of this section, must be returned to the State. Funds so returned are available for expenditure by State and local recipients and subrecipients only during the third program year of availability. These funds may:

(i) Be used for Statewide projects, or

(ii) Be distributed to other local areas which had fully expended their allocation of funds for the same program year within the two-year period.

(c) *Job Corps.* Funds obligated for any program year for any Job Corps activity carried out under title I, subtitle C, of WIA, may be expended during that program year and the two succeeding program years.

(d) *Funds awarded under WIA section 171 and 172.* (a) Funds obligated for any program year for a program or activity authorized under section 171 or 172 of WIA remain available until expended.

(e) *Other programs under title I of WIA.* For all other grants, contracts and cooperative agreements issued under title I of WIA the period of availability for expenditure is set in the terms and conditions of the award document.

§ 667.110 What is the Governor/Secretary Agreement?

(a) To establish a continuing relationship under the Act, the Governor and the Secretary will enter into a Governor/Secretary Agreement. The Agreement will consist of a statement assuring that the State will comply with:

(1) The Workforce Investment Act and all applicable rules and regulations, and

(2) The Wagner-Peyser Act and all applicable rules and regulations.

(b) The Governor/Secretary Agreement may be modified, revised or terminated at any time, upon the agreement of both parties.

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

Each State seeking financial assistance under WIA sections 127 (youth) or 132 (adults and dislocated workers) or under the Wagner-Peyser Act must submit a single State Plan. The requirements for the plan content and the plan review process are described in WIA section 112, Wagner-Peyser section 8, and 20 CFR § 652.6, 652.7, and 661.220.

§ 667. 130 How are WIA title I formula funds allocated to local workforce investment areas?

(a) *General.* The Governor must allocate WIA formula funds allotted for services to youth, adults and dislocated workers in accordance with WIA sections 128 and 133, and this section.

(1) State Boards must assist Governors in the development of any discretionary within-State allocation formulas. (WIA sec. 111(d)(5).)

(2) Within-State allocations must be made:

(i) In accordance with the allocation formulas contained in WIA section 128(b) and 133(b) and in the State workforce investment plan, and (ii) After consultation with chief elected officials in each of the workforce investment areas.

(b) *State Reserve.* (1) Of the WIA formula funds allotted for services to youth, adults and dislocated workers, the Governor must reserve funds from each of these sources for Statewide workforce investment activities. In making these reservations, the Governor may reserve up to fifteen (15) percent from each of these sources. Funds reserved under this paragraph may be combined and spent on Statewide employment and training activities, for adults and dislocated workers, and Statewide youth activities, as described in 20 CFR 665.200 and 665.210, without regard to the funding source of the reserved funds.

(2) The Governor must reserve a portion of the dislocated worker funds for Statewide rapid response activities, as described in WIA section 134(a)(2)(A) and 20 CFR 665.310 through 665.330. In making this reservation, the Governor may reserve up to twenty-five (25) percent of the dislocated worker funds.

(c) *Youth allocation formula.* (1) Unless the Governor elects to distribute funds in accordance with the discretionary allocation formula described in paragraph (c)(2) of this section, the remainder of youth funds not reserved under paragraph (b)(1) of this section must be allocated:

(i) 33⅓ percent on the basis of the relative number of unemployed individuals in areas of substantial unemployment in each workforce investment area, compared to the total number of unemployed individuals in all areas of substantial unemployment in the State;

(ii) 33⅓ percent on the basis of the relative excess number of unemployed individuals in each workforce investment area, compared to the total excess number of unemployed individuals in the State; and

(iii) 33⅓ percent on the basis of the relative number of disadvantaged youth in each workforce investment area, compared to the total number of disadvantaged youth in the State. [WIA sec. 128(b)(2)(A)(i)]

(2) *Discretionary youth allocation formula.* In lieu of making the formula allocation described in paragraph (c)(1) of this section, the State may allocate youth funds under a discretionary formula. Under that formula, the State must allocate a minimum of 70 percent of youth funds not reserved under paragraph (b)(1) of this section on the basis of the formula in paragraph (c)(1) of this section, and may allocate up to 30 percent on the basis of a formula that:

(i) Incorporates additional factors (other than the factors described in pargraph (c)(1) of this section) relating to:

(A) Excess youth poverty in urban, rural and suburban local areas; and

(B) Excess unemployment above the State average in urban, rural and suburban local areas; and

(ii) Was developed by the State Board and approved by the Secretary of Labor as part of the State workforce investment plan. (WIA sec. 128(b)(3).)

(d) *Adult allocation formula.* (1) Unless the Governor elects to distribute funds in accordance with the discretionary allocation formula described in paragraph (d)(2) of this section, the remainder of adult funds not reserved under paragraph (b)(1) of this section must be allocated:

(i) 33⅓ percent on the basis of the relative number of unemployed individuals in areas of substantial unemployment in each workforce investment area, compared to the total number of unemployed individuals in areas of substantial unemployment in the State;

(ii) 33⅓ percent on the basis of the relative excess number of unemployed individuals in each workforce investment area, compared to the total excess number of unemployed individuals in the State; and

(iii) 33⅓ percent on the basis of the relative number of disadvantaged adults in each workforce investment area, compared to the total number of disadvantaged adults in the State. (WIA sec. 133(b)(2)(A)(i))

(2) *Discretionary adult allocation formula.* In lieu of making the formula allocation described in paragraph (d)(1)of this section, the State may allocate adult funds under an discretionary formula. Under that formula, the State must allocate a minimum of 70 percent of adult funds on the basis of such formula in paragraph (d)(1) of this section, and may allocate up to 30 percent on the basis of a formula that:

(i) Incorporates additional factors (other than the factors described in paragraph (d)(1) of this section) relating to:

(A) Excess poverty in urban, rural and suburban local areas; and

(B) Excess unemployment above the State average in urban, rural and suburban local areas; and

(ii) Was developed by the State Board and approved by the Secretary of Labor as part of the State workforce investment plan. (WIA sec. 133(b)(3).)

(e) *Dislocated worker allocation formula.* (1) The remainder of dislocated worker funds not reserved under paragraph (b)(1) or (b)(2) of this section must be allocated on the basis of a formula prescribed by the Governor that distributes funds in a manner that addresses the State's worker readjustment assistance needs. Funds so distributed must not be less than 60 percent of the State's formula allotment.

(2)(i) The Governor's dislocated worker formula must use the most appropriate information available to the Governor, including information on:

(A) Insured unemployment data,

(B) Unemployment concentrations,

(C) Plant closings and mass layoff data,

(D) Declining industries data,

(E) Farmer-rancher economic hardship data, and

(F) Long-term unemployment data.

(ii) The State Plan must describe the data used for the formula and the weights assigned, and explain the State's decision to use other information or to omit any of the information sources set forth in paragraph (e)(2)(i) of this section.

(3) The Governor may not amend the dislocated worker formula more than once for any program year.

(4)(i) Dislocated worker funds initially reserved by the Governor for Statewide rapid response activities in accordance with paragraph (b)(2) of this section may be:

(A) Distributed to local areas, and (B) Used to operate projects in local areas in accordance with the requirements of WIA section 134(a)(2)(A) and 20 CFR 665.310 through 665.330.

(ii) The State Plan must describe the procedures for any distribution to local areas, including the timing and process for determining whether a distribution will take place.

§ 667.140 Does a Local Board have the authority to transfer funds between programs?

(a) A Local Board may transfer up to 20 percent of a program year allocation for adult employment and training activities, and up to 20 percent of a program year allocation for dislocated worker employment and training activities between the two programs.

(b) Before making any such transfer, a Local Board must obtain the Governor's approval.

(c) Local Boards may not transfer funds to or from the youth program.

§ 667.150 What reallotment procedures does the Secretary use?

(a) The first reallotment of funds among States will occur during PY 2001 based on obligations in PY 2000.

(b) The Secretary determines, during the first quarter of the program year, whether a State has obligated its required level of at least 80 percent of the funds allotted under WIA sections 127 and 132 for programs serving youth, adults, and dislocated workers for the prior year as separately determined for each of the three funding streams. Unobligated balances are determined based on allotments adjusted for any allowable transfer between the adult and dislocated worker funding streams. The amount to be recaptured from each State for reallotment, if any, is based on State obligations of the funds allotted to each State under WIA sections 127 and 132 for programs serving youth, adults, or dislocated workers, less any amount reserved (up to 5 percent at the State level and up to 10 percent at the local

level) for the costs of administration. This amount, if any, is separately determined for each funding stream.

(c) The Secretary reallots youth, adult and dislocated worker funds among eligible States in accordance with the provisions of WIA sections 127(c) and 132(c), respectively. To be eligible to receive a reallotment of youth, adult, or dislocated worker funds under the reallotment procedures, a State must have obligated at least 80 percent of the prior program year allotment, less any amount reserved for the costs of administration of youth, adult, or dislocated worker funds. A State's eligibility to receive a reallotment is separately determined for each funding stream.

§ 667.160 What reallocation procedures must the Governors use?

(a) The Governor may reallocate youth, adult, and dislocated worker funds among local areas within the State in accordance with the provisions of sections 128(c) and 133(c) of the Act. If the Governor chooses to reallocate funds, the provisions in paragraphs (b) and (c) of this section apply.

(b) For the youth, adult and dislocated worker programs, the amount to be recaptured from each local area for purposes of reallocation, if any, must be based on the amount by which the prior year's unobligated balance of allocated funds exceeds 20 percent of that year's allocation for the program, less any amount reserved (up to 10 percent) for the costs of administration. Unobligated balances must be determined based on allocations adjusted for any allowable transfer between funding streams. This amount, if any, must be separately determined for each funding stream.

(c) To be eligible to receive youth, adult or dislocated worker funds under the reallocation procedures, a local area must have obligated at least 80 percent of the prior program year's allocation, less any amount reserved (up to 10 percent) for the costs of administration, for youth, adult, or dislocated worker activities, as separately determined. A local area's eligibility to receive a reallocation must be separately determined for each funding stream.

§ 667.170 What responsibility review does the Department conduct for awards made under WIA title I, subtitle D?

(a) Before final selection as a potential grantee, the Department conducts a review of the available records to assess the organization's overall responsibility to administer Federal funds. As part of this review, the Department may consider any information that has come to its attention and will consider the organization's history with regard to the management of other grants, including DOL grants. The failure to meet any one responsibility test, except for those listed in paragraphs (a)(1) and (a)(2) of this section, does not establish that the organization is not responsible unless the failure is substantial or persistent (for two or more consecutive years). The responsibility tests include:

(1) The organization's efforts to recover debts (for which three demand letters have been sent) established by final agency action have been unsuccessful, or that there has been failure to comply with an approved repayment plan;

(2) Established fraud or criminal activity of a significant nature within the organization.

(3) Serious administrative deficiencies identified by the Department, such as failure to maintain a financial management system as required by Federal regulations;

(4) Willful obstruction of the audit process;

(5) Failure to provide services to applicants as agreed to in a current or recent grant or to meet applicable performance standards;

(6) Failure to correct deficiencies brought to the grantee's attention in writing as a result of monitoring activities, reviews, assessments, or other activities;

(7) Failure to return a grant closeout package or outstanding advances within 90 days of the grant expiration date or receipt of closeout package, whichever is later, unless an extension has been requested and granted; final billings reflecting serious cost category or total budget cost overrun;

(8) Failure to submit required reports;

(9) Failure to properly report and dispose of government property as instructed by DOL;

(10) Failure to have maintained effective cash management or cost controls resulting in excess cash on hand;

(11) Failure to ensure that a subrecipient complies with its OMB Circular A–133 audit requirements specified at § 667.200(b);

(12) Failure to audit a subrecipient within the required period;

(13) Final disallowed costs in excess of five percent of the grant or contract award if, in the judgement of the grant officer, the disallowances are egregious findings and;

(14) Failure to establish a mechanism to resolve a subrecipient's audit in a timely fashion.

(b) This responsibility review is independent of the competitive process. Applicants which are determined to be not responsible will not be selected as potential grantees irrespective of their standing in the competition.

Subpart B—Administrative Rules, Costs and Limitations

§ 667.200 What general fiscal and administrative rules apply to the use of WIA title I funds?

(a) *Uniform fiscal and administrative requirements.* (1) Except as provided in paragraphs (a)(3) through (6) of this section, State, local, and Indian tribal government organizations that receive grants or cooperative agreements under WIA title I must follow the common rule ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments'' which is codified at 29 CFR part 97.

(2) Except as provided in paragraphs (a)(3) through (6) of this section, institutions of higher education, hospitals, and other non-profit organizations must follow the common rule implementing OMB Circular A–110 which is codified at 29 CFR part 95.

(3) In addition to the requirements at 29 CFR 95.48 or 29 CFR 97.36(i) (as appropriate), all procurement contracts and other transactions between Local Boards and units of State or local governments must be conducted only on a cost reimbursement basis. No provision for profit is allowed. (WIA sec. 184(a)(3)(B).)

(4) In addition to the requirements at 29 CFR 95.42 or 29 CFR 97.36(b)(3) (as appropriate), which address codes of conduct and conflict of interest issues related to employees:

(i) A State Board member or a Local Board member or Youth Council member must neither cast a vote on, nor participate in, any decision-making capacity on the provision of services by such member (or any organization which that member directly represents), nor on any matter which would provide any direct financial benefit to that member or a member of his immediate family.

(ii) Neither membership on the State Board, the Local Board or the Youth Council nor the receipt of WIA funds to provide training and related services, by itself, violates these conflict of interest provisions.

(5) The addition method, described at 29 CFR 95.24 or 29 CFR 97.25(g)(2) (as appropriate), must be used for the all program income earned under WIA title I grants. When the cost of generating program income has been charged to the program, the gross amount earned must be added to the WIA program. However,

the cost of generating program income must be subtracted from the amount earned to establish the net amount of program income available for use under the grants when these costs have not been charged to the WIA program.

(6) Any excess of revenue over costs incurred for services provided by a governmental or non-profit entity must be included in program income. (WIA sec. 195(7)(A) and (B).)

(7) On a fee-for-service basis, employers may use local area services, facilities, or equipment funded under title I of WIA to provide employment and training activities to incumbent workers:

(i) When the services, facilities, or equipment are not being used by eligible participants;

(ii) If their use does not affect the ability of eligible particpants to use the services, facilities, or equipment; and

(iii) If the income generated from such fees is used to carry out programs authorized under this title.

(b) *Audit requirements.* (1) All governmental and non-profit organizations must follow the audit requirements of OMB Circular A–133. These requirements are found 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.

(2)(i) The Department is responsible for audits of commercial organizations which are direct recipients of Federal financial assistance under WIA title I.

(ii) Commercial organizations which are subrecipients under WIA title I and which expend more than the minimum level specified in OMB Circular A–133 ($300,000 as of April 15, 1999) must have either an organization-wide audit conducted in accordance with A–133 or a program specific financial and compliance audit.

(c) *Allowable costs/cost principles.* All recipients and subrecipients must follow the Federal allowable cost principles that apply to their kind of organizations. 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. The applicable Federal principles for each kind of recipient are described in paragraphs (c)(1) through (5) of this section; all recipients must comply with paragraph (c)(6) of this section. For those selected items of cost requiring prior approval, the authority to grant or deny approval is delegated to the Governor for programs funded under sections 127 or 132 of the Act.

(1) Allowable costs for State, local, and Indian tribal government organizations must be determined under OMB Circular A–87, ''Cost Principles for State, Local and Indian Tribal Governments.''

(2) Allowable costs for non-profit organizations must be determined under OMB Circular A–122, ''Cost Principles for Non-Profit Organizations.''

(3) Allowable costs for institutions of higher education must be determined under OMB Circular A–21, ''Cost Principles for Educational Institutions.''

(4) Allowable costs for hospitals must be determined in accordance under appendix E of 45 CFR part 74, ''Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals.''

(5) Allowable costs for commercial organizations and those non-profit organizations listed in Attachment C to OMB Circular A–122 must be determined under the provisions of the Federal Acquisition Regulation (FAR), at 48 CFR part 31.

(6) In addition to the allowable cost provisions identified above, the cost of information technology—computer hardware and software—will only be allowable under WIA title I grants when such computer technology is ''Year 2000 compliant.'' To meet this requirement, information technology must be able to accurately process date/time (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, must accurately process date/time data if the other information technology properly exchanges date/time with it.

(d) *Government-wide debarment and suspension, and government-wide drug-free workplace requirements.* All WIA title I grant recipients and subrecipients must comply with the government-wide requirements for debarment and suspension, and the government-wide requirements for a drug-free workplace codified at 29 CFR part 98.

(e) *Restrictions on Lobbying.* All WIA title I grant recipients and subrecipients must comply with the restrictions on lobbying which are codified in the DOL regulations at 29 CFR part 93.

(f) *Nondiscrimination.* All WIA title I recipients, as the term is defined in 29 CFR 31.2(h), must comply with the nondiscrimination and equal opportunity provisions of WIA sec. 188 and its implementing regulations. Information on the handling of discrimination complaints by participants and other interested parties may be found at § 667.600(f) of this part.

(g) *Nepotism.* (1) No individual may be placed in a WIA employment activity if a member of that person's immediate family is directly supervised by or directly supervises that individual.

(2) To the extent that an applicable State or local legal requirement regarding nepotism is more restrictive than this provision, such State or local requirement must be followed.

§ 667.210 What administrative cost limits apply to Workforce Investment Act title I grants?

(a) Formula grants to States:

(1) As part of the 15 percent that a State may reserve for Statewide activities, the State may spend up to five percent (5%) of the amount allotted under sections 127(b)(1), 132(b)(1) and 132(b)(2) of the Act for the administrative costs of Statewide workforce investment activities.

(2) Local area expenditures for administrative purposes under WIA formula grants are limited to no more than ten percent (10%) of the amount allocated to the local area under sections 128(b) and 133(b) of the Act.

(3) Neither the five percent (5%) of the amount allotted that may be reserved for Statewide administrative costs nor the ten percent (10%) of the amount allotted that may be reserved for local administrative costs need to be allocated back to the individual funding streams.

(b) Limits on administrative costs for programs operated under subtitle D of title I will be identified in the grant or contract award document.

(c) Although administrative in nature, costs of information technology—computer hardware and software—needed for tracking and monitoring of WIA program, participant, or performance requirements; or for collecting, storing and disseminating information under the core services provisions at sections 134(d)(2)(E), (F), (G), (H) and (I) of the Act, are excluded from the administrative cost limit calculation.

(d) In a One-Stop environment, administrative costs borne by other sources of funds, such as the Wagner-Peyser Act, are not included in the administrative cost limit calculation. Each program's administrative activities area chargeable to its own grant and subject to its own administrative cost limitations.

§ 667.220 What Workforce Investment Act title I functions and activities constitute the costs of administration subject to the administrative cost limit?

(a) The costs of administration are that allocable portion of necessary and allowable costs that are associated with the overall management and administration of the workforce investment system and which are not related to the direct provision of workforce investment activities. These costs can be both personnel and non-personnel and both direct and indirect.

(b) The costs of administration include the costs associated with performing the responsibilities of the State and Local Workforce Investment Boards and of chief elected officials or boards of chief elected officials required for the local public/private partnership. The specific responsibilities of these boards and officials include, but are not limited to, those identified in the sections of the Act dealing with workforce investment boards and areas and one-stop systems, (WIA secs. 111(d), 116, 117(d), (e) & (h)(4), and 121(a)), such as:

(1) Performing overall general administrative functions and coordination of those functions under WIA title I including:

(i) Preparing program plans, budgets, related schedules, and amendments or modifications thereto;

(ii) Negotiating MOUs and awarding specific subgrants, contracts, and purchase orders through appropriate procurement processes,

(iii) Conducting public relations activities which are not related to program outreach,

(iv) Developing systems and procedures, including information systems for assuring compliance with program requirements, except:

(A) Those needed for tracking and monitoring of WIA program, participant, or performance requirements; or

(B) For collecting, storing and disseminating information under the core services provisions at WIA sections 134(d)(2)(E), (F), (G), (H) and (I) and information necessary to comply with WIA section 188 and its implementing regulations.

(v) Coordinating the resolution of findings arising from audits, reviews, investigations and incident reports, and

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

(2) Performing oversight responsibilities including monitoring of WIA programs, projects and subrecipients, and related systems and processes for compliance with program requirements,

(3) Costs for goods and services required for administration of the program, including goods and services such as rental or purchase of equipment, utilities, office supplies, postage, and rental and maintenance of office space;

(4) The costs of organization-wide management functions;

(5) Travel costs incurred for official business in carrying out administrative activities or the overall management of the WIA system; and

(6) Costs of information systems not related to the tracking and monitoring of WIA program, participant, or performance requirements; or for collecting, storing and disseminating information under the core services provisions at sections 134(d)(2)(E), (F), (G), (H) and (I) of the Act, (for example, personnel, accounting and payroll systems).

(c)(1) That portion of the costs of One-Stop operators which are associated with the performance of the administrative functions described in paragraph (b) of this section are classified as administrative costs. That portion of the costs of one-stop operators which are associated with the direct provision of workforce investment activities are classified as program costs.

(2) 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 as administrative or program costs to the benefitting cost objectives/categories based on documented distributions of actual time worked or other equitable cost allocation methods.

(3) Costs of staff who provide program services directly to participants and, where applicable, the first line supervisors and/or team leaders responsible for those staff are classified as a program cost.

(4) Specific costs charged to an overhead or indirect cost pool that can be identified directly as a program cost may be charged as a program cost. Documentation of such charges must be maintained.

(5) The costs of contracts, whether fixed price or cost reimbursement, awarded for the purpose of obtaining specific goods or services may be charged to the administration or program category based on the purpose for which the contract was awarded.

(6) The following information systems and data entry costs are charged to the program category.

(i) Tracking or monitoring of participant and performance information;

(ii) Employment statistics information, including job listing information, job skills information, and demand occupation information;

(iii) Performance and program cost information on eligible providers of training services, youth activities, and appropriate education activities;

(iv) Local area performance information; and

(v) Information relating to supportive services and unemployment insurance claims for program participants;

(7) Continuous improvement activities are charged to administration or program category based on the purpose or nature of the activity to be improved. Documentation of such charges must be maintained.

§ 667.250 What requirements relate to the enforcement of the Military Selective Service Act?

The requirements relating to the enforcement of the Military Selective Service Act are found at WIA section 189(h).

§ 667.260 May WIA title I funds be spent for construction?

WIA title I funds must not be spent on construction or purchase of facilities or buildings except:

(a) To meet a recipient's, as the term is defined in 29 CFR 31.2(h), obligation to provide physical and programmatic accessibility and reasonable accommodation, as required by section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended;

(b) To fund repairs, alterations and capital improvements of:

(1) SESA real property, identified at WIA section 193, using a formula that assesses costs proportionate to space utilized;

(2) JTPA owned property which is transferred to WIA title I programs;

(c) For Job Corps facilities, as authorized by WIA section 160(3)(B); and

(d) To fund disaster relief employment on projects for demolition, cleaning, repair, renovation, and reconstruction of damaged and destroyed structures, facilities, and lands located within a disaster area. (WIA sec. 173(d).)

§ 667.262 Are employment generating activities, or similar activities, allowable under WIA title I?

(a) Under WIA section 181(e), WIA title I funds may not be spent on

employment generating activities, economic development, and other similar activities, unless they are directly related to training for eligible individuals. For purposes of this section, employer outreach and job development activities are directly related to training for eligible individuals.

(b) These employer outreach and job development activities include:

(1) Contacts with potential employers for the purpose of placement of WIA participants;

(2) Participation in business associations (such as chambers of commerce);

(3) WIA staff participation on economic development boards and commissions, and work with economic development agencies, to:

(i) Provide information about WIA programs,

(ii) Assist in making informed decisions about community job training needs, and

(iii) Promote the use of first source hiring agreements and enterprise zone vouchering services,

(4) Active participation in local business resource centers (incubators) to provide technical assistance to small and new business to reduce the rate of business failure;

(5) Subscriptions to relevant publications;

(6) General dissemination of information on WIA programs and activities;

(7) The conduct of labor market surveys;

(8) The development of on-the-job training opportunities; and (9) Other allowable WIA activities in the private sector. (WIA sec. 181(e).)

§ 667.264 What other activities are prohibited under title I of WIA?

(a) WIA title I funds must not be spent on:

(1) The wages of incumbent employees during their participation in economic development activities provided through a Statewide workforce investment system, (WIA sec. 181(b)(1).);

(2) Public service employment, except to provide disaster relief employment, as specifically authorized in section 173(d) of WIA, (WIA sec. 195(10));

(3) Expenses prohibited under any other Federal, State or local law or regulation.

(b) WIA formula funds available to States and local areas under subtitle B, title I of WIA must not be used for foreign travel. (WIA sec. 181(e).)

§ 667.266 What are the limitations related to sectarian activities?

(a) WIA title I funds may not be spent on the employment or training of participants in sectarian activities.

(b) Participants must not be employed under title I of WIA to carry out the construction, operation, or maintenance of any part of any facility that is used or to be used for sectarian instruction or as a place for religious worship. However, WIA funds may be used for the maintenance of a facility that is not primarily or inherently devoted to sectarian instruction or religious worship if the organization operating the facility is part of a program or activity providing services to WIA participants. (WIA sec. 188(a)(3).)

§ 667.268 What prohibitions apply to the use of WIA title I funds to encourage business relocation?

(a) WIA funds may not be used or proposed to be used for:

(1) The encouragement or inducement of a business, or part of a business, to relocate from any location in the United States, if the relocation results in any employee losing his or her job at the original location;

(2) Customized training, skill training, or on-the-job training or company specific assessments of job applicants or employees of a business or a part of a business that has relocated from any location in the United States, until the company has operated at that location for 120 days, if the relocation has resulted in any employee losing his or her jobs at the original location.

(b) Pre-award review. To verify that an establishment which is new or expanding is not, in fact, relocating employment from another area, standardized pre-award review criteria developed by the State must be completed and documented jointly by the local area with the establishment as a prerequisite to WIA assistance. The review must include names under which the establishment does business, including predecessors and successors in interest; the name, title, and address of the company official certifying the information, and whether WIA assistance is sought in connection with past or impending job losses at other facilities, including a review of whether WARN notices relating to the employer have been filed. (WIA sec. 181(d).)

§ 667.269 What procedures and sanctions apply to violations of §§ 667.260 through 667.268?

(a) The Secretary will promptly review and take appropriate action with regard to alleged violations of the provisions relating to:

(1) Employment generating activities (§ 667.262);

(2) Other prohibited activities (§ 667.264);

(3) The limitation related to sectarian activities (§ 667.266);

(4) The use of WIA title I funds to encourage business relocation (§ 667.268).

(b) Procedures for the investigation and resolution of the violations are provided for under the Grant Officer's resolution process at § 667.510 of this subpart. Sanctions and remedies are provided for under WIA section 184(c) for violations of the provisions relating to:

(1) Construction (§ 667.260);

(2) Employment generating activities (§ 667.262);

(3) Other prohibited activities (§ 667.264); and

(4) The limitation related sectarian activities in (§ 667.266(a)).

(c) Sanctions and remedies are provided for under WIA section 181(d)(3) for violations of § 667.268 of this subpart, which addresses business relocation.

(d) Violations of § 667.266(b) will be handled in accordance with the DOL nondiscrimination regulations implementing WIA section 188.

§ 667.270 What safeguards are there to ensure that participants in Workforce Investment Act employment and training activities do not displace other employees?

(a) A participant in a program or activitiy authorized under title I of WIA must not displace (including a partial displacement, such as a reduction in the hours of nonovertime work, wages, or employment benefits) any currently employed employee (as of the date of the participation).

(b) A program or activity authorized under title I of WIA must not impair existing contracts for services or collective bargaining agreements. When a program or activity authorized under title I of WIA would be inconsistent with a collective bargaining agreement, the appropriate labor organization and employer must provide written concurrence before the program or activity begins.

(c) A participant in a program or activity under title I of WIA may not be employed in or assigned to a job if:

(1) Any other individual is on layoff from the same or any substantially equivalent job;

(2) The employer has terminated the employment of any regular, unsubsidized employee or otherwise caused an involuntary reduction in its workforce with the intention of filling the vacancy so created with the WIA participant; or

(3) The job is created in a promotional line that infringes in any way on the promotional opportunities of currently employed workers.

(d) Regular employees and program participants alleging displacement may file a complaint under the applicable grievance procedures found at § 667.600 of this part. (WIA sec. 181.)

§ 667.272 What wage and labor standards apply to participants in activities under title I of WIA?

(a) Individuals in on-the-job training or individuals employed in activities under title I of WIA must be compensated at the same rates, including periodic increases, as trainees or employees who are similarly situated in similar occupations by the same employer and who have similar training, experience and skills. Such rates must be in accordance with applicable law, but may not be less than the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) or the applicable State or local minimum wage law.

(b) Individuals in on-the-job training or individuals employed in programs and activities under Title I of WIA must be provided benefits and working conditions at the same level and to the same extent as other trainees or employees working a similar length of time and doing the same type of work.

(c) Allowances, earnings, and payments to individuals participating in programs under Title I of WIA are not considered as income for purposes of determining eligibility for and the amount of income transfer and in-kind aid furnished under any Federal or Federally assisted program based on need other than as provided under the Social Security Act (42 USC 301 *et seq.*). (WIA sec. 181(a)(2).)

§ 667.274 What health and safety standards apply to the working conditions of participants in activities under title I of WIA?

(a) Health and safety standards established under Federal and State law otherwise applicable to working conditions of employees are equally applicable to working conditions of participants engaged in programs and activities under Title I of WIA.

(b)(1) To the extent that a State workers' compensation law applies, workers' compensation must be provided to participants in programs and activities under Title I of WIA on the same basis as the compensation is provided to other individuals in the State in similar employment.

(2) If a State workers' compensation law applies to a participant in work experience, workers' compensation benefits must be available with respect to injuries suffered by the participant in such work experience. If a State workers' compensation law does not apply to a participant in work experience, insurance coverage must be secured for injuries suffered by the participant in the course of such work experience.

§ 667.275 What are a recipient's obligations to ensure nondiscrimination and equal opportunity, as well as nonparticipation in sectarian activities?

(a)(1) Recipients, including State and local workforce investment boards, One-Stop operators, service providers, vendors and subrecipients, must comply with the nondiscrimination and equal opportunity provisions of WIA section 188 and its implementing regulations.

(2) Nondiscrimination and equal opportunity requirements and procedures, including complaint processing and compliance reviews, are governed by the regulations implementing WIA sec. 188 and are administered and enforced by the DOL Civil Rights Center.

(3) As described in § 667.260(a), funds may be used to meet a recipient's obligation to provide physical and programmatic accessibility and reasonable accommodation in regard to the WIA program, as required by section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended.

(b) Except with respect to the maintenance of a facility that is not primarily or inherently devoted to sectarian instruction or religious worship, in a case in which the organization operating the facility is part of a program or activity providing services to participants, the employment or training of participants in sectarian activities is prohibited.

Subpart C—Reporting Requirements

§ 667.300 What are the reporting requirements for Workforce Investment Act programs?

(a) *General.* All States and other direct grant recipients must report financial, participant, and performance data in accordance with instructions issued by DOL. Required reports must be submitted no more frequently than quarterly within a time period specified in the reporting instructions.

(b) *Subrecipient reporting.* (1) 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.

(2) If a State intends to impose different reporting requirements, it must describe those reporting requirements in its State WIA plan.

(c) *Financial reports.* (1) Each grant recipient must submit financial reports to DOL.

(2) Reports must include any income or profits earned, including such income or profits earned by subrecipients, and any costs incurred (such as stand-in costs) that are otherwise allowable except for funding limitations. (WIA sec. 185(f)(2))

(3) Reported expenditures and program income, including any profits earned, 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 must develop accrual information through an analysis of the documentation on hand.

(d) *Due date.* Financial reports and participant data reports are due no later than 45 days after the end of each quarter unless otherwise specified in reporting instructions. A final financial report is required 90 days after the expiration of a funding period or the termination of grant support.

(e) *Annual Performance Progress Report.* An annual performance progress report for each of the three programs under title I, subpart B is required by WIA section 136(d).

(1) A State failing to submit any of these annual performance progress reports within 45 days of the due date may have its grant (for that program or all title I, subpart B programs) for the succeeding year reduced by as much as five percent, as provided by WIA section 136(g)(1)(B).

(2) States submitting annual performance progress reports that cannot be validated or verified as accurately counting and reporting activities in accordance with the reporting instructions, may be treated as failing to submit annual reports, and be subject to sanction. Sanctions related to State performance or failure to submit these reports timely cannot result in a total grant reduction of more than five percent. Any sanction would be in addition to having to repay the amount of any incentive funds granted based on the invalid report.

Subpart D—Oversight and Monitoring

§ 667.400 Who is responsible for oversight and monitoring of WIA title I grants?

(a) The Secretary is authorized to monitor all recipients and subrecipients

of all grants awarded and funds expended under WIA title I to determine compliance with the Act and these regulations, and may investigate any matter deemed necessary to determine such compliance. Federal oversight will be conducted primarily at the recipient level.

(b) In each fiscal year, the Secretary will also conduct in-depth reviews in several States, including financial and performance audits, to assure that funds are spent in accordance with the Act. Priority for such in-depth reviews will be given to States not meeting annual adjusted levels of performance.

(c)(1) Each recipient and subrecipient must continuously monitor grant-supported activities in accordance with the uniform administrative requirements at 29 CFR parts 95 and 97, as applicable, including the applicable cost principles indicated at 29 CFR 97.22(b) or 29 CFR 95.27, for all entities receiving WIA title I funds. For governmental units, the applicable requirements are at 29 CFR part 97. For non-profit organizations, the applicable requirements are at 29 CFR part 95.

(2) In the case of grants under WIA secs. 127 and 132, the Governor must develop a State monitoring system that meets the requirements of § 667.410(b) of this subpart. The Governor must monitor Local Boards annually for compliance with applicable laws and regulations in accordance with the State monitoring system. Monitoring must include an annual review of each local area's compliance with the uniform administrative requirements.

§ 667.410 What are the oversight roles and responsibilities of recipients and subrecipients?

(a) *Roles and responsibilities for all recipients and subrecipients of funds under WIA title I in general.* Each recipient and subrecipient must conduct regular oversight and monitoring of its WIA activities and those of its subrecipients and contractors in order to:

(1) Determine that expenditures have been made against the cost categories and within the cost limitations specified in the Act and these regulations;

(2) Determine whether or not there is compliance with other provisions of the Act and these regulations and other applicable laws and regulations; and

(3) Provide technical assistance as necessary and appropriate.

(b) *State roles and responsibilities for grants under WIA sections 127 and 132.*

(1) The Governor is responsible for the development of the State monitoring system. The Governor must be able to demonstrate to the Department, through a monitoring plan or otherwise, that the State monitoring system meets the requirements of paragraph (b)(2) of this section.

(2) The State monitoring system must:

(i) Provide for annual on-site monitoring reviews of local areas' compliance with DOL uniform administrative requirements, as required by WIA section 184(a)(4);

(ii) Ensure that established policies to achieve program quality and outcomes meet the objectives of the Act and these regulations, including the provision of services by One-Stop Centers, eligible providers of training services, and eligible providers of youth activities;

(iii) Enable the Governor to determine if subrecipients and contractors have demonstrated substantial compliance with WIA requirements; and

(iv) Enable the Governor to determine whether a local plan will be disapproved for failure to make acceptable progress in addressing deficiencies, as required in WIA sec. 118(d)(1).

(3) The State must conduct an annual on-site monitoring review of each local area's compliance with DOL uniform administrative requirements, including the appropriate administrative requirements for subrecipients and the applicable cost principles indicated at § 667.200 for all entities receiving WIA title I funds.

(4) The Governor must require that prompt corrective action be taken if any substantial violation of standards identified in paragraphs (b)(2) or (3) of this section is found. (WIA sec. 184(a)(5).)

(5) The Governor must impose the sanctions provided in WIA sections 184(b) and (c) in the event of a subrecipients's failure to take required corrective action required under paragraph (b)(4) of this section.

(6) The Governor may issue additional requirements and instructions to subrecipients on monitoring activities.

(7) Governor must certify to the Secretary every two years that:

(i) The State has implemented uniform administrative requirements;

(ii) The State has monitored local areas to ensure compliance with uniform administrative requirements; and

(iii) The State has taken appropriate corrective action to secure such compliance. (WIA sec. 184(a)(6)(A), (B), and (C).)

Subpart E—Resolution of Findings From Monitoring and Oversight Reviews

§ 667.500 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 resolving findings that arise from the State's monitoring reviews, investigations and audits (including OMB Circular A–133 audits) of subrecipients.

(2) A State must 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 must prescribe standards and procedures to be used for this grant program.

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

(2) The Secretary uses the DOL audit resolution process, consistent with the Single Audit Act of 1996 and OMB Circular A–133, and Grant Officer Resolution provisions of § 667.510 of this subpart, as appropriate.

(3) A final determination issued by a Grant Officer under this process may be appealed to the DOL Office of Administrative Law Judges under the procedures at § 667.800 of this part.

(c) *Resolution of nondiscrimination findings.* Findings arising from investigations or reviews conducted under nondiscrimination laws will be resolved in accordance with WIA section 188 and the Department of Labor nondiscrimination regulations implementing WIA section 188.

§ 667.505 How does the Department resolve investigative and monitoring findings?

(a) As a result of an investigation, on-site visit or other monitoring, the Department notifies the recipient of the findings of the investigation and gives the recipient a period of time (not more than 60 days) to comment and to take appropriate corrective actions.

(b) The Grant Officer reviews the complete file of the investigation or monitoring report and the recipient's actions under paragraph (a) of this section. The Grant Officer's review takes into account the sanction provisions of WIA sections 184(b) and (c). If the Grant Officer agrees with the recipient's handling of the situation, the Grant

Officer so notifies the recipient. This notification constitutes final agency action.

(c) If the Grant Officer disagrees with the recipient's handling of the matter, the Grant Officer proceeds under § 667.510 of this subpart.

§ 667.510 What is the Grant Officer resolution process?

(a) *General.* When the Grant Officer is dissatisfied with the State's disposition of an audit or other resolution of violations (including those arising out of incident reports or compliance reviews), or with the recipient's response to findings resulting from investigations or monitoring report, the initial and final determination process, set forth in this section, is used to resolve the matter.

(b) *Initial determination.* The Grant Officer makes an initial determination on the findings for both those matters where there is agreement and those where there is disagreement with the recipient's resolution, including the allowability of questioned costs or activities. This initial determination is based upon the requirements of the Act and regulations, and the terms and conditions of the grants, contracts, or other agreements under the Act.

(c) *Informal resolution.* Except in an emergency situation, when the Secretary invokes the authority described in WIA section 184(e), the Grant Officer may not revoke a recipient's grant in whole or in part, nor institute corrective actions or sanctions, without first providing the recipient with an opportunity to present documentation or arguments to resolve informally those matters in controversy contained in the initial determination. The initial determination must provide for an informal resolution period of at least 60 days from issuance of the initial determination. If the matters are resolved informally, the Grant Officer must issue a final determination under paragraph (d) of this section which notifies the parties in writing of the nature of the resolution and may close the file.

(d) *Grant Officer's final determination.* (1) If the matter is not fully resolved informally, the Grant Officer provides each party with a written final determination by certified mail, return receipt requested. For audits of recipient-level entities and other recipients which receive WIA funds directly from DOL, ordinarily, the final determination is issued not later than 180 days from the date that the Office of Inspector General (OIG) issues the final approved audit report to the Employment and Training Administration. For audits of subrecipients conducted by the OIG, ordinarily the final determination is issued not later than 360 days from the date the OIG issues the final approved audit report to ETA.

(2) A final determination under this paragraph (d) must:

(i) Indicate that efforts to informally resolve matters contained in the initial determination have been unsuccessful;

(ii) List those matters upon which the parties continue to disagree;

(iii) List any modifications to the factual findings and conclusions set forth in the initial determination and the rationale for such modifications;

(iv) Establish a debt, if appropriate;

(v) Require corrective action, when needed;

(vi) Determine liability, method of restitution of funds and sanctions; and

(vii) Offer an opportunity for a hearing in accordance with § 667.800 of this part.

(3) Unless a hearing is requested, a final determination under this paragraph (d) is final agency action and is not subject to further review.

(e) Nothing in this subpart precludes the Grant Officer from issuing an initial determination and/or final determination directly to a subrecipient, in accordance with section 184(d)(3) of the Act. In such a case, the Grant Officer will inform the recipient of this action.

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

§ 667.600 What local area, State and direct recipient grievance procedures must be established?

(a) Each local area, State and direct recipient of funds under title I of WIA, except for Job Corps, must establish and maintain a procedure for grievances and complaints according to the requirements of this section. The grievance procedure requirements applicable to Job Corps are set forth at 20 CFR 670.990.

(b) Local area procedures must provide:

(1) A process for dealing with grievances and complaints from participants and other interested parties affected by the local Workforce Investment System, including one-stop partners and service providers;

(2) An opportunity for an informal resolution and a hearing to be completed within 60 days of the filing of the grievance or complaint;

(3) A process which allows an individual alleging a labor standards violation to submit the grievance to a binding arbitration procedure, if a collective bargaining agreement covering the parties to the grievance so provides; and

(4) An opportunity for a local level appeal to a State entity when:

(i) No decision is reached within 60 days; or

(ii) Either party is dissatisfied with the local hearing decision.

(c) State procedures must provide:

(1) A process for dealing with grievances and complaints from participants and other interested parties affected by the Statewide Workforce Investment programs;

(2) A process for resolving appeals made under paragraph (b)(4) of this section;

(3) A process for remanding grievances and complaints related to the local Workforce Investment Act programs to the local area grievance process; and

(4) An opportunity for an informal resolution and a hearing to be completed within 60 days of the filing of the grievance or complaint; and

(d) Procedures of direct recipients must provide:

(1) A process for dealing with grievance and complaints from participants and other interested parties affected by the recipient's Workforce Investment Act programs; and

(2) An opportunity for an informal resolution and a hearing to be completed within 60 days of the filing of the grievance or complaint.

(e) The remedies that may be imposed under local, State and direct recipient grievance procedures are enumerated at WIA section 181(c)(3).

(f)(1) Under WIA section 188(a), complaints of discrimination from participants and other interested parties must be handled in accordance with WIA section 188(b), and the Department of Labor nondiscrimination regulations implementing that section.

(2) Questions about or complaints alleging a violation of the nondiscrimination provisions of WIA section 188 may be directed or mailed to the Director, Civil Rights Center, U.S. Department of Labor, Room N4123, 200 Constitution Avenue, NW, Washington, DC 20210, for processing.

(g) Nothing in this subpart precludes a grievant or complainant from pursuing a remedy authorized under another Federal, State or local law.

§ 667.610 What processes does the Secretary use to review State and local grievances and complaints?

(a) The Secretary investigates allegations arising through the grievance procedures described in § 667.600 when:

(1) A decision relating to a grievance or complaint under § 667.600(c) has not been reached within 60 days of receipt

of the grievance or complaint or within 60 days of receipt of the request for appeal of a local level grievance and either party appeals to the Secretary; or

(2) A decision relating to a grievance or complaint under § 667.600(c) has been reached and the party to which such decision is adverse appeals to the Secretary.

(b) The Secretary must make a final decision on an appeal under paragraph (a) of this section no later than 120 days after receiving such appeal.

(c) Appeals made under to paragraph (a)(2) of this section must be filed within 60 days of the receipt of the decision being appealed. Appeals made under to paragraph (a)(1) of this section must be filed within 120 days of the filing of the grievance with the State, or the filing of the appeal of a local grievance with the State. All appeals must be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, Washington, DC 20210, Attention: ASET. A copy of the appeal must be simultaneously provided to the appropriate ETA Regional Administrator and the opposing party.

(d) Except for complaints arising under WIA section 184(f), grievances or complaints made directly to the Secretary will be referred to the appropriate State or local area for resolution in accordance with this section, unless the Secretary notifies the parties that the Department will investigate the grievance under the procedures at § 667.505.

§ 667.630 How are complaints and reports of criminal fraud and abuse addressed under WIA?

Information and complaints involving criminal fraud, waste, abuse or other criminal activity must be reported immediately through the Department's Incident Reporting System to the DOL Office of Inspector General, Office of Investigations, Room S5514, 200 Constitution Avenue NW., Washington, DC 20210, or to the corresponding Regional Inspector General for Investigations, with a copy simultaneously provided to the Employment and Training Administration. The Hotline number is 1–800–347–3756. Complaints of a non-criminal nature are handled under the procedures set forth in § 667.505 of this part or through the Department's Incident Reporting System.

§ 667.640 What additional appeal processes or systems must a State have for the WIA program?

(a) *Non-designation of local areas.* (1) The State must establish, and include in its State Plan, due process procedures which provide expeditious appeal to the State Board for a unit or combination of units of general local government or a rural concentrated employment program grant recipient (as described at WIA section 116(a)(2)(B)) that requests, but is not granted, automatic or temporary and subsequent designation as a local workforce investment area under WIA section 116(a)(2) or 116(a)(3).

(2) These procedures must provide an opportunity for a hearing and prescribe appropriate time limits to ensure prompt resolution of the appeal.

(3) If the appeal to the State Board does not result in designation, the appellant may request review by the Secretary under § 667.645.

(4) If the Secretary determines that the appellant was not accorded procedural rights under the appeal process established in paragraph (a)(1) of this section, or that the area meets the requirements for designation at WIA section 116(a)(2) or 116(a)(3), the Secretary may require that the area be designated as a workforce investment area.

(b) *Denial or termination of eligibility as a training provider.* (1) A State must establish procedures which allow providers of training services the opportunity to appeal:

(i) Denial of eligibility by a Local Board or the designated State agency under WIA section 122(b), (c) or (e);

(ii) Termination of eligibility or other action by a Local Board or State agency under section 122(f); or

(iii) Denial of eligibility as a provider of on-the-job training (OJT) or customized training by a One-Stop operator under WIA section 122(h).

(2) Such procedures must provide an opportunity for a hearing and prescribe appropriate time limits to ensure prompt resolution of the appeal.

(3) A decision under this State appeal process may not be appealed to the Secretary.

(c) *Testing and sanctioning for use of controlled substances.* (1) A State must establish due process procedures which provide expeditious appeal for:

(i) WIA participants subject to testing for use of controlled substances, imposed under a State policy established under WIA section 181(f); and

(ii) WIA participants who are sanctioned after testing positive for the use of controlled substances, under the policy described in paragraph (c)(i) of this section.

(2) A decision under this State appeal process may not be appealed to the Secretary.

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

(a) A unit or combination of units of general local government or rural concentrated employment program grant recipient (as described at WIA section 116(a)(2)(B)) whose appeal of the denial of a request for automatic or temporary and subsequent designation as a local workforce investment area to the State Board has not resulted in designation may appeal the denial of local area designation to the Secretary.

(b) Appeals made under to paragraph (a) of this section must be filed no later than 30 days after receipt of written notification of the denial from the State Board, and must be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, Washington, DC 20210, Attention: ASET. A copy of the appeal must be simultaneously provided to the State Board.

(c) The appellant must establish that it was not accorded procedural rights under the appeal process set forth in the State Plan, or establish that it meets the requirements for designation in WIA sections 116(a)(2) or (a)(3). The Secretary may consider any comments submitted in response by the State Board.

(d) If the Secretary determines that the appellant has met its burden of establishing that it was not accorded procedural rights under the appeal process set forth in the State Plan, or that it meets the requirements for designation in WIA sections 116(a)(2) or (a)(3), the Secretary may require that the area be designated as a local workforce investment area.

(e) The Secretary must issue a written decision to the Governor and the appellant.

§ 667.650 What procedures apply to the appeals of the Governor's imposition of sanctions for substantial violations or performance failures by a local area?

(a) A local area which has been found in substantial violation of WIA title I, and has received notice from the Governor that either all or part of the local plan will be revoked or that a reorganization will occur, may appeal such sanctions to the Secretary under WIA section 184(b). The actions do not become effective until:

(1) The time for appeal has expired; or

(2) The Secretary has issued a decision.

(b) A local area which has failed to meet local performance measures for two consecutive years, and has received the Governor's notice of intent to impose a reorganization plan, may

appeal such sanctions to the Secretary under WIA section 136(h)(1)(B).

(c) Appeals made under paragraph (a) or (b) of this section must be filed no later than 30 days after receipt of written notification of the revoked plan or imposed reorganization, and must be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, Washington, DC 20210, Attention: ASET. A copy of the appeal must be simultaneously provided to the Governor.

(d) The Secretary may consider any comments submitted in response by the Governor.

(e) The Secretary will notify the Governor and the appellant in writing of the Secretary's decision under paragraph (a) of this section within 45 days after receipt of the appeal. The Secretary will notify the Governor and the appellant in writing of the Secretary's decision under paragraph (b) of this section within 30 days after receipt of the appeal.

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

§ 667.700 What procedure does the Department utilize to impose sanctions and corrective actions on recipients and subrecipients of WIA grant funds?

(a) Except for actions under WIA section 188(a) (relating to nondiscrimination requirements), the Grant Officer uses the initial and final determination procedures outlined in § 667.510 of this part to impose a sanction or corrective action.

(b) To impose a sanction or corrective action regarding a violation of WIA section 188(a), the Department will utilize the procedures of WIA section 188(b) and the Department of Labor nondiscrimination regulations implementing that section.

(c) To impose a sanction or corrective action for noncompliance with the uniform administrative requirements set forth at section 184(a)(3) of WIA, and § 667.200(a) of this part, when the Secretary determines that the Governor has not taken corrective action to remedy the violation required by WIA section 184(a)(5), the Grant Officer, under the authority of WIA section 184(a)(7), may impose any of the corrective actions set forth at WIA section 184(b)(1). In such situations, the Secretary may immediately suspend or terminate financial assistance in accordance with WIA section 184(e).

(d) The Grant Officer may also impose a sanction directly against a subrecipient, as authorized in section 184(d)(3) of the Act. In such a case, the Grant Officer will inform the recipient of the action.

§ 667.705 Who is responsible for funds provided under title I of WIA?

(a) The recipient is responsible for all funds under its grant(s).

(b) The political jurisdiction(s) of the chief elected official(s) in a local workforce investment area is liable for any misuse of the WIA grant funds allocated to the local area under WIA sections 128 and 133, unless the chief elected official(s) reaches an agreement with the Governor to bear such liability.

(c) When a local workforce area is composed of more than one unit of general local government, the joint liability of the individual jurisdictions must be specified in a written agreement between the chief elected officials.

§ 667.710 What actions are required to address the failure of a local area to comply with the applicable uniform administrative provisions?

(a) If, as part of the annual on-site monitoring of local areas, the Governor determines that a local area is not in compliance with the uniform administrative requirements found at 29 CFR part 95 or part 97, as appropriate, the Governor must:

(1) Require corrective action to secure prompt compliance; and

(2) Impose the sanctions provided for at section 184(b) if the Governor finds that the local area has failed to take timely corrective action.

(b) An action by the recipient to impose a sanction against a local area, in accordance with this section, may be appealed to the Secretary in accordance with § 667.650, and will not become effective until:

(1) The time for appeal has expired; or

(2) The Secretary has issued a decision.

(c) If the Secretary finds that the Governor has failed to promptly take the actions required upon a determination under paragraph (a) of this section that a local area is not in compliance with the uniform administrative requirements, the Secretary must take such actions against the State recipient or the local area, as appropriate.

§ 667.720 How does the Department handle a recipient's request for waiver of liability under WIA section 184(d)(2)?

(a) A recipient may request a waiver of liability, as described in WIA section 184(d)(2), and a Grant Officer may approve such a waiver under WIA section 184(d)(3).

(b)(1) When the debt for which a waiver of liability is desired was established in a non-Federal resolution proceeding, the resolution report must accompany the waiver request.

(2) When the waiver request is made during the ETA Grant Officer resolution process, the request must be made during the informal resolution period described in § 667.510(c) of this part.

(c) A waiver of the recipient's liability shall be considered by the Grant Officer only when:

(1) The misexpenditure of WIA funds occurred at a subrecipient's level;

(2) The misexpenditure was not due to willful disregard of the requirements of title I of the Act, gross negligence, failure to observe accepted standards of administration, or did not constitute fraud;

(3) If fraud did exist, it was perpetrated against the recipient/subrecipients; and

(i) The recipient/subrecipients discovered, investigated, reported, and cooperated in any prosecution of the perpetrator of the fraud; and

(ii) After aggressive debt collection action, it has been documented that further attempts at debt collection from the perpetrator of the fraud would be inappropriate or futile;

(4) The recipient has issued a final determination which disallows the misexpenditure, the recipient's appeal process has been exhausted, and a debt has been established; and

(5) The recipient requests such a waiver and provides documentation to demonstrate that it has substantially complied with the requirements of section 184(d)(2) of the Act, and this section.

(d) The recipient will not be released from liability for misspent funds under the determination required by section 184(d) of the Act unless the Grant Officer determines that further collection action, either by the recipient or subrecipients, would be inappropriate or would prove futile.

§ 667.730 What is the procedure to handle a recipient's request for advance approval of contemplated corrective actions?

(a) The recipient may request advance approval from the Grant Officer for contemplated corrective actions, including debt collection actions, which the recipient plans to initiate or to forego. The recipient's request must include a description and an assessment of all actions taken by the subrecipients to collect the misspent funds.

(b) Based on the recipient's request, the Grant Officer may determine that the recipient may forego certain collection actions against a subrecipient when:

(1) The subrecipient meets the criteria set forth in section 184(d)(2) of the Act;

(2) The misexpenditure of funds:

(i) Was not made by that subrecipient but by an entity that received WIA funds from that subrecipient;

(ii) Was not a violation of section 184(d)(1) of the Act, and did not constitute fraud; or

(iii) If fraud did exist,

(A) It was perpetrated against the subrecipient; and:

(B) The subrecipient discovered, investigated, reported, and cooperated in any prosecution of the perpetrator of the fraud; and

(C) After aggressive debt collection action, it has been documented that further attempts at debt collection from the perpetrator of the fraud would be inappropriate or futile;

(3) A final determination which disallows the misexpenditure and establishes a debt has been issued at the appropriate level;

(4) Final action within the recipient's appeal system has been completed; and

(5) Further debt collection action by that subrecipient or the recipient would be either inappropriate or futile.

§ 667.740 What procedure must be used for administering the offset/deduction provisions at WIA section 184(c)?

(a)(1) For recipient level misexpenditures, the Secretary may determine that a debt, or a portion thereof, may be offset against amounts that are allotted to the recipient. Recipients must submit a written request for an offset to the Grant Officer. Generally, the Secretary will apply the offset against amounts that are available at the recipient level for administrative costs.

(2) The Grant Officer may approve an offset request, under paragraph (b)(1) of this section, if the misexpenditures were not due to willful disregard of the requirements of the Act and regulations, gross negligence, failure to observe accepted standards of administration or a pattern of misexpenditure.

(b) For subrecipient level misexpenditures that were not due to willful disregard of the requirements of the Act and regulations, gross negligence, failure to observe accepted standards of administration or a pattern of misexpenditure, if the Secretary has required the State to repay such amount the State may deduct an amount equal to the misexpenditure from its subsequent year's allocations to the local area from funds available for the administrative costs of the local programs involved.

(c) If offset is granted, the debt will not be fully satisfied until the Grant Officer reduces amounts allotted to the State by the amount of the misexpenditure.

(d) A State may not make a deduction under paragraph (b)(2) of this section until the State has taken appropriate corrective action to ensure full compliance within the local area with regard to appropriate expenditure of WIA funds.

Subpart H—Administrative Adjudication and Judicial Review

§ 667.800 What actions of the Department may be appealed to the Office of Administrative Law Judges?

(a) An applicant for financial assistance under title I of WIA which is dissatisfied because the Secretary has issued a determination not to award financial assistance, in whole or in part, to such applicant; or a recipient, subrecipient, or a vendor against which the Grant Officer has directly imposed a sanction or corrective action, including a sanction against a State under 20 CFR part 666, may appeal to the U.S. Department of Labor, Office of Administrative Law Judges (OALJ) within 21 days of receipt of the final determination.

(b) Failure to request a hearing within 21 days of receipt of the final determination will constitute a waiver of the right to a hearing.

(c) A request for a hearing under this subpart must state specifically those issues in the final determination upon which review is requested. Those provisions of the final determination not specified for review, or the entire final determination when no hearing has been requested within the 21 days, are considered resolved and not subject to further review. Only alleged violations of the Act, its regulations, grant or other agreement under the Act fairly raised in the determination, and the request for hearing are subject to review.

(d) A request for a hearing must be transmitted by certified mail, return receipt requested, to the Chief Administrative Law Judge, U.S. Department of Labor, Suite 400, 800 K Street, NW, Washington, DC 20001, with one copy to the Departmental official who issued the determination.

(e) The procedures set forth in this subpart apply in the case of a complainant who has not had a dispute adjudicated under the alternative dispute resolution process set forth in § 667.840 of this part within the 60 days, except that the request for hearing before the OALJ must be filed within 15 days of the conclusion of the 60-day period. In addition to including the final determination upon which review is requested, the complainant must include a copy of any Stipulation of Facts and a brief summary of proceedings.

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

(a) *Rules of practice and procedure.* The rules of practice and procedure promulgated by the OALJ at subpart A of 29 CFR part 18, govern the conduct of hearings under this subpart. However, a request for hearing under this subpart is not considered a complaint to which the filing of an answer by DOL or a DOL agency or official is required. Technical Rules of evidence will not apply to hearings conducted pursuant to this part. However, Rules or principles designed to assure production of the most credible evidence available and to subject testimony to cross-examination will apply.

(b) *Prehearing procedures.* In all cases, the Administrative Law Judge (ALJ) should encourage the use of prehearing procedures to simplify and clarify facts and issues.

(c) *Subpoenas.* Subpoenas necessary to secure the attendance of witnesses and the production of documents or other items at hearings must be obtained from the ALJ and must be issued under the authority contained in section 183(c) of the Act, incorporating 15 U.S.C. 49.

(d) *Timely submission of evidence.* The ALJ must not permit the introduction at the hearing of any documentation if it has not been made available for review by the other parties to the proceeding either at the time ordered for any prehearing conference, or, in the absence of such an order, at least 3 weeks prior to the hearing date.

(e) *Burden of production.* The Grant Officer has the burden of production to support her or his decision. To this end, the Grant Officer prepares and files an administrative file in support of the decision which must be made part of the record. Thereafter, the party or parties seeking to overturn the Grant Officer's decision has the burden of persuasion.

§ 667.820 What authority will the Administrative Law Judge have in ordering relief as an outcome of an administrative hearing?

In ordering relief, the ALJ has the full authority of the Secretary under the Act.

§ 667.825 What special rules apply to reviews of MSFW and WIA INA grant selections?

(a) An applicant whose application for funding as a WIA INA grantee under 20 CFR part 668 or as an MSFW grantee under 20 CFR part 669 is denied in whole or in part by the Department may request an administrative review under § 667.800(a) with respect to whether there is a basis in the record to support the Department's decision. This appeal

will not in any way interfere with the Department's designation and funding of another organization to serve the area in question during the appeal period. The available remedy in such an appeal is the right to be designated in the future as the WIA INA or MSFW grantee for the remainder of the current grant cycle. Neither retroactive nor immediately effective selection status may be awarded as relief in a non-selection appeal under this section. The appellant may not be awarded a grant nor given any kind of preference beyond the current two year-grant period.

(b) If the ALJ rules that the organization should have been selected and the organization continues to meet the requirements of 20 CFR part 668 or part 669, the Department will select and fund the organization within 90 days of the ALJ's decision unless the end of the 90-day period is within six (6) months of the end of the funding period. An applicant so selected is not entitled to the full grant amount, but will only receive the funds remaining in the grant that have not been expended by the current grantee through its operation of the grant and its subsequent closeout.

(c) Any organization selected and/or funded as a WIA INA or MSFW grantee is subject to being removed as grantee in the event an ALJ decision so orders. The Grant Officer provides instructions on transition and close-out to a grantee which is removed. All parties must agree to the provisions of this paragraph as a condition for WIA INA or MSFW funding.

§ 667.830 When will the Administrative Law Judge issue a decision?

(a) The ALJ should render a written decision not later than 90 days after the closing of the record.

(b) The decision of the Administrative Law Judge (ALJ) constitutes final agency action unless, within 20 days of the decision, a party dissatisfied with the ALJ's decision has filed a petition for review with the Administrative Review Board (ARB) (established under Secretary's Order No. 2–96, specifically identifying the procedure, fact, law or policy to which exception is taken. Any exception not specifically urged is 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 constitutes final agency action unless the ARB, within 30 days of the filing of the petition for review, notifies the parties that the case has been accepted for review. Any case accepted by the ARB must be decided within 120 days of acceptance. If not so decided, the decision of the ALJ constitutes final agency action.

§ 667.840 Is there an alternative dispute resolution process that may be used in place of an OALJ hearing?

(a) Parties to a complaint which has been filed according to the requirements of § 667.800 of this part may choose to waive their rights to an administrative hearing before the OALJ. Instead, they may choose to transfer the settlement of their dispute to an individual acceptable to all parties who will conduct an informal review of the stipulated facts and render a decision in accordance with applicable law. A written decision must be issued within 60 days after submission of the matter for informal review.

(b) The waiver of the right to request a hearing before the OALJ will automatically be revoked if a settlement has not been reached or a decision has not been issued within the 60 days provided in paragraph (a) of this section.

(c) The decision rendered under this informal review process will be treated as a final decision of an Administrative Law Judge under section 186(b) of the Act.

§ 667.850 Is there judicial review of a final order of the Secretary issued under WIA sec. 186 of the Act?

(a) Any party to a proceeding which resulted in a final order of the Secretary under section 186 of the Act may obtain a review in the United States Court of Appeals having jurisdiction over the applicant or recipient of funds involved, by filing a review petition within 30 days of the issuance of the Secretary's final order.

(b) The court has jurisdiction to make and enter a decree affirming, modifying, or setting aside the order of the Secretary, in whole or in part.

(c) No objection to the Secretary's order may be considered by the court unless the objection was specifically urged, in a timely manner, before the Secretary. The review is limited to questions of law, and the findings of fact of the Secretary are conclusive if supported by substantial evidence.

(d) The judgment of the court is final, subject to certiorari review by the United States Supreme Court.

§ 667.860 Are there other authorities for the pursuit of remedies outside of the Act?

Nothing contained in this subpart prejudices the separate exercise of other legal rights in pursuit of remedies and sanctions available outside the Act.

Subpart I—Transition

§ 667.900 What special rules apply during the JTPA/WIA transition?

(a)(1) To facilitate planning for the implementation of WIA, a Governor may reserve an amount equal to no more than 2 percent of the total amount of JTPA formula funds allotted to the State for PY's 1998 and 1999 for expenditure on transition planning activities. The funds may be from any one or more of the JTPA titles and subparts, that is, funds do not have to be drawn proportionately from all titles and subparts. The Governor must report the expenditure of these funds for transition planning separately in accordance with instructions issued by the Secretary, but is not required to be allocated to the various titles and subparts;

(2) These reserved transition funds may be excluded from any calculation of compliance with JTPA cost limitations.

(b) Not less than 50 percent of the funds reserved by the Governor in paragraph (a) of this section must be made available to local entities.

(c) The Secretary will issue such other transition guidance as necessary and appropriate.

PART 668—INDIAN AND NATIVE AMERICAN PROGRAMS UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

Subpart A—Purposes and Policies

Sec.

Subpart B—Service Delivery Systems Applicable to Section 166 Programs

Authority: Secs. 506(c) and 166(h)(2) Pub. L. 105–220; 20 U.S.C. 9276(c); 29 U.S.C. 2911(h)(2)

Subpart A—Purposes and Policies

§ 668.100 What is the purpose of the programs established to serve Native American peoples (INA programs) under sec. 166 of the Workforce Investment Act (WIA)?

(a) The purpose of WIA INA programs is to support comprehensive employment and training activities for Indian, Alaska Native and Native Hawaiian individuals in order to:

(1) Develop more fully their academic, occupational, and literacy skills;

(2) Make them more competitive in the workforce;

(3) Promote the economic and social development of Indian, Alaska Native, and Native Hawaiian communities according to the goals and values of such communities; and

(4) Help them achieve personal and economic self-sufficiency.

(b) The principal means of accomplishing these purposes is to enable tribes and Native American organizations to provide employment and training services to Native American peoples and their communities. Services should be provided in a culturally appropriate manner, consistent with the principles of Indian self-determination. (WIA sec. 166(a)(1).)

§ 668.120 How must INA programs be administered?

(a) The Department will administer INA programs to maximize the Federal commitment to support the growth and development of Native American people and communities as determined by representatives of such communities.

(b) In administering these programs, the Department will observe the Congressional declaration of policy set forth in the Indian Self-Determination and Education Assistance Act, at 25 U.S.C. 450a, as well as the Department of Labor's ''American Indian and Alaska Native Policy,'' dated July 29, 1998.

(c) These regulations are not intended to abrogate the trust responsibilities of the Federal Government to Native American bands, tribes, or groups in any way.

(d) The Department will administer INA programs through a single organizational unit and consistent with the requirements in section 166(h) of the Act. The Department has designated the Division of Indian and Native American Programs (DINAP) within the Employment and Training Administration (ETA) as this single organizational unit required by WIA section 166(h)(1).

(e) The Department will establish and maintain administrative procedures for the selection, administration, monitoring, and evaluation of Native American employment and training programs authorized under this Act. The Department will utilize staff who have a particular competence in this field to administer these programs. (WIA sec. 166(h).)

§ 668.130 What obligation does the Department have to consult with the INA grantee community in developing rules, regulations, and standards of accountability for INA programs?

The Department will consult with the Native American grantee community as a full partner in developing policies for the INA programs. The Department will actively seek and consider the views of all INA grantees, and will discuss options with the grantee community prior to establishing policies and program regulations. The primary consultation vehicle is the Native American Employment and Training Council. (WIA sec. 166(h)(2).)

§ 668.140 How do the WIA regulations apply to the INA program?

(a) The regulations found in this subpart.

(b) The general administrative requirements found in 20 CFR part 667, including the regulations concerning Complaints, Investigations and Hearings found at 20 CFR part 667 subpart E through subpart H.

(c) The Department's regulations codifying the common rules implementing Office of Management and Budget (OMB) Circulars which generally apply to Federal programs carried out by Indian tribal governments and nonprofit organizations, at 29 CFR parts 95, 96, and 97, as applicable.

§ 668.150 What definitions apply to terms used in the regulations in this part?

In addition to the definitions found in WIA sections 101 and 166 and 20 CFR 660.300, the following definitions apply:

DINAP means the Division of Indian and Native American Programs within the Employment and Training Administration of the Department.

Governing Body means a body of representatives who are duly elected, appointed by duly elected officials, or selected according to traditional tribal means. A governing body must have the authority to provide services to and to enter into grants on behalf of the organization that selected or designated it.

Grant Officer means a Department of Labor official authorized to obligate Federal funds.

Indian or Native American (INA) Grantee means an entity which is formally designated under subpart B of this part to operate an INA program and which has a grant agreement pursuant to 20 CFR 668.292.

NEW means the Native Employment Works Program, the tribal work program authorized under section 412(a)(2) of the Social Security Act, as amended by the Personal Responsibility and Work Opportunity Reconciliation Act (Pub. L. 104–193).

Underemployed means an individual who is working part time but desires full time employment, or who is working in employment not commensurate with the individual's demonstrated level of educational attainment.

Subpart B—Service Delivery Systems Applicable to Section 166 Programs

§ 668.200 What are the requirements for designation as an ''Indian or Native American (INA) grantee''?

(a) To be designated as an INA grantee for PY 1999, an entity must have:

(1) A legal status as a government or as an agency of a government, as a private non-profit corporation, or a consortium which contains at least one of these entities;

(2) The ability to administer INA program funds, as defined at § 668.220 of this subpart; and

(3) For PY 1999 only, a population within the designated geographic service area of 1,000 or more Native American persons.

(b) For PY 2000 and beyond, an entity must have:

(1) A legal status as a government or as an agency of a government, private non-profit corporation, or a consortium which contains at least one of these entities;

(2) The ability to administer INA program funds, as defined at § 668.220 of this subpart; and

(3) A new (non-incumbent) entity must have a population within the designated geographic service area which would provide funding under the funding formula found at § 668.296(b) in the amount of at least $100,000, including any amounts received for supplemental youth services under the funding formula at § 668.440(a). Incumbent grantees which do not meet this dollar threshold for PY 2000 and beyond will be grandfathered in. We will make an exception for grantees wishing to participate in the demonstration program under Pub. L. 102–477 if all resources to be consolidated under the Pub. L. 102–477 plan total at least $100,000.

(c) To be designated as a Native American grantee, a consortium or its members must meet the requirements of paragraphs (a) and (b) of this section and must:

(1) Be in close proximity to one another, but they may operate in more than one State;

(2) Have an administrative unit legally authorized to run the program and to commit the other members to contracts, grants, and other legally-binding agreements; and

(3) Be jointly and individually responsible for the actions and obligations of the consortium, including debts.

(d) Entities potentially eligible for designation under paragraph (a)(1) or (b)(1) of this section are:

(1) Federally-recognized Indian tribes;

(2) Tribal organizations, as defined in 25 U.S.C. 450b;

(3) Alaska Native-controlled organizations representing regional or village areas, as defined in the Alaska Native Claims Settlement Act;

(4) Native Hawaiian-controlled entities;

(5) State-recognized Indian tribes;

(6) Native American-controlled organizations serving Indians; and

(7) Consortia of eligible entities which meets the legal requirements for a consortium described in paragraph (c) of this section.

§ 668.210 What priority for designation is given to eligible organizations?

(a) Federally-recognized Indian tribes, Alaska Native entities, or consortia that include a tribe or entity will have the highest priority for designation. To be designated, the organizations must meet the requirements in this Subpart. These organizations will be designated for those geographic areas over which they have legal jurisdiction. (WIA section 166(c)(1).)

(b) If the Department decides not to designate Indian tribes or Alaska Native entities to serve their service areas, the Department will enter into arrangements to provide services with entities which the tribes or Alaska Native entities involved approve.

(c) In geographic areas not served by Indian tribes or Alaska Native entities, entities with a Native American-controlled governing body and which are representative of the Native American community or communities involved will have priority for designation.

§ 668.220 What is meant by the ''ability to administer funds'' for designation purposes?

An organization has the ''ability to administer funds'' if it:

(a) Is in compliance with Departmental debt management procedures, if applicable;

(b) Has not been found guilty of fraud or criminal activity which would affect the entity's ability to safeguard Federal funds or deliver program services;

(c) Can demonstrate that it has or can acquire the necessary program and financial management personnel to

safeguard Federal funds and effectively deliver program services; and

(d) Can demonstrate that it has successfully carried out, or has the capacity to successfully carry out activities that will strengthen the ability of the individuals served to obtain or retain unsubsidized employment.

§ 668.230 How will the Department determine an entity's ''ability to administer funds?''

(a) Before determining which entity to designate for a particular service area, the Department will conduct a review of the entity's ability to administer funds.

(b) The review for an entity that has served as a grantee in either of the two designation periods before the one under consideration, also will consider the extent of compliance with these regulations or the JTPA regulations at 20 CFR part 632. Evidence of the ability to administer funds may be established by a satisfactory Federal audit record. It may also be established by a recent record showing substantial compliance with Federal record keeping, reporting, program performance standards, or similar standards imposed on grantees by this or other public sector supported programs.

(c) For other entities, the review includes the experience of the entity's management in administering funds for services to Native American people. This review also includes an assessment of the relationship between the entity and the Native American community or communities to be served.

§ 668.240 What is the process for applying for designation as an INA grantee?

(a) Every entity seeking designation must submit a Notice of Intent (NOI) which complies with the requirements of the Solicitation for Grant Application (SGA). An SGA will be issued every two years, covering all areas except for those for which competition is waived for the incumbent grantee under WIA section 166(c)(2).

(b) NOI's must be submitted to the Chief of DINAP, bearing a U.S. Postal Service postmark indicating its submission no later than October 1st of the year which precedes the first year of a new designation cycle. For NOI's received after October 1, only a timely official U.S. Postal Service postmark is acceptable as proof of timely submission. Dates indicating submission by private express delivery services or metered mail are unacceptable as proof of the timely submission of designation documents.

(c) NOI's must include the following:

(1) Documentation of the legal status of the entity, as described in § 668.200(a)(1);

(2) A Standard Form (SF) 424—Application for Federal Assistance;

(3) A specific description, by State, county, reservation or similar area, or service population, of the geographic area for which the entity requests designation;

(4) A brief summary of the employment and training or human resource development programs serving Native Americans that the entity currently operates or has operated within the previous two-year period.

(5) A description of the planning process used by the entity, including the involvement of the governing body and local employers.

(6) Evidence to establish an entities ability to administer funds under §§ 668.220–668.230.

§ 668.250 What happens if two or more entities apply for the same area?

(a) Every two years, unless there has been a waiver of competition for the area, the Department issues a Solicitation for Grant Application (SGA) seeking applicants for INA program grants.

(b) If two or more entities apply for grants for the same service area, or for overlapping service areas, and a waiver of competition under WIA section 166(c)(2) is not granted to the incumbent grantee, the following additional procedures apply:

(1) The Grant Officer will follow the regulations for priority designation at § 668.210.

(2) If no applicant is entitled to priority designation, DINAP will inform each entity which submitted a NOI, including the incumbent grantee, in writing, of all the competing Notices of Intent no later than November 15 of the year the NOI's are received.

(3) Each entity will have an opportunity to describe its service plan, and may submit additional information addressing the requirements of § 668.240(c) or such other information as the applicant determines is appropriate. Revised Notices must be received or contain an official U.S. Postal Service postmark, no later than January 5th.

(4) The Grant Officer selects the entity that demonstrates the ability to produce the best outcomes for its customers.

§ 668.260 How are INA grantees designated?

(a) On March 1 of each designation year, the Department designates or conditionally designates Native American grantees for the coming two program years. The Grant Officer informs, in writing, each entity which submitted a Notice of Intent that the entity has been:

(1) Designated;

(2) Conditionally designated;

(3) Designated for only a portion of its requested area or population; or

(4) Denied designation.

(b) Designated Native American entities must ensure and provide evidence to DOL that a system is in place to afford all members of the eligible population within their service area an equitable opportunity to receive employment and training activities and services.

§ 668.270 What appeal rights are available to entities that are denied designation?

Any entity that is denied designation in whole or in part for the area or population that it requested may appeal the denial to the Office of the Administrative Law Judges using the procedures at 20 CFR 667.800 or the alternative dispute resolution procedures at 20 CFR 667.840. The Grant Officer will provide an entity whose request for designation was denied, in whole or in part, with a copy of the appeal procedures.

§ 668.280 Are there any other ways in which an entity may be designated as an INA grantee?

Yes, for an area which would otherwise go unserved. The Grant Officer may designate an entity, which has not submitted an NOI, but which meets the qualifications for designation, to serve the particular geographic area. Under such circumstances, DINAP will seek the views of Native American leaders in the area involved about the decision to designate the entity to serve that community. DINAP will inform the Grant Officer of their views. The Grant Officer will accommodate their views to the extent possible.

§ 668.290 Can an INA grantee's designation be terminated?

(a) Yes. The Grant Officer can terminate a grantee's designation for cause, or the Secretary or another DOL official confirmed by the Senate can terminate a grantee's designation in emergency circumstances where termination is necessary to protect the integrity of Federal funds or ensure the proper operation of the program. (WIA sec. 184(e).)

(b) The Grant Officer may terminate a grantee's designation for cause only if there is a substantial or persistent violation of the requirements in the Act or these regulations. The grantee must be provided with written notice 60 days before termination, stating the specific reasons why termination is proposed. The appeal procedures at 20 CFR 667.800 apply.

(c) The Secretary must give a grantee terminated in emergency circumstances prompt notice of the termination and an opportunity for a hearing within 30 days of the termination.

§ 668.292 How does a designated entity become an INA grantee?

A designated entity becomes a grantee on the effective date of an executed grant agreement, signed by the authorized official of the grantee organization and the Grant Officer. The grant agreement includes a set of certifications and assurances that the grantee will comply with the terms of the Act, these regulations, and other appropriate requirements. Funds are released to the grantee upon Departmental approval of the required planning documents, as described in §§ 668.710 through 668.740.

§ 668.294 Does the Department have to designate an INA grantee for every part of the country?

No. Beginning with the PY 2000 grant awards, if there are no entities meeting the requirements for designation in a particular area, or willing to serve that area, the Department will not allocate funds for that service area. The funds allocated to that area will be distributed to the remaining INA grantees, or used for other program purposes such as technical assistance and training (TAT). Remaining funds used for technical assistance and training are in addition to, and not subject to the limitations on, amounts reserved under § 668.296(e). Areas which are unserved by the INA program may be restored during a subsequent designation cycle, when and if a current grantee or other eligible entity applies for and is designated to serve that area.

§ 668.296 How are WIA funds allocated to INA grantees?

(a) Except for reserved funds described in paragraph (e) of this section, all funds available for WIA section 166(d)(2)(A)(i) comprehensive workforce investment services program at the beginning of a Program Year will be allocated to Native American grantees for their designated geographic service areas.

(b) Each INA grantee will receive the sum of the funds calculated under the following formula:

(1) One-quarter of the funds available will be allocated on the basis of the number of unemployed Native American persons in the grantee's designated INA service area(s) compared to all such persons in all such areas in the United States.

(2) Three-quarters of the funds available will be allocated on the basis of the number of Native American persons in poverty in the grantee's designated INA service area(s) as compared to all such persons in all such areas in the United States.

(3) The data and definitions used to implement these formulas is provided by the U.S. Bureau of the Census.

(c) In years immediately following the use of new data in the formula described in paragraph (b) of this section, the Department, based upon criteria to be described in the SGA, may utilize a hold harmless factor to reduce the disruption in grantee services which would otherwise result from changes in funding levels. This factor will be determined in consultation with the grantee community and the Native American Employment and Training Council.

(d) The Department may reallocate funds from one INA grantee to another if a grantee is unable to serve its area for any reason, such as audit or debt problems, criminal activity, internal (political) strife, or lack of ability or interest. Funds may also be reallocated if a grantee has carry-in excess of 20 percent of the total funds available to it. Carry-in amounts greater than 20 percent but less than 25 percent of total funds available may be allowed under an approved waiver issued by DINAP.

(e) The Department may reserve up to one percent (1 percent) of the funds appropriated under WIA section 166(d)(2)(A)(i) for any Program Year for TAT purposes. Technical assistance will be provided in consultation with the Native American Employment and Training Council.

Subpart C—Services to Customers

§ 668.300 Who is eligible to receive services under the INA program?

(a) A person is eligible to receive services under the INA program if that person is:

(1) An Indian, as determined by a policy of the Native American grantee. The grantee's definition must at least include anyone who is a member of a Federally-recognized tribe; or

(2) An Alaska Native, as defined in section 3(b) of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. 1602(b); or

(3) A Native Hawaiian, as defined in WIA section 166(b)(3).

(b) The person must also be any one of the following:

(1) Unemployed; or

(2) Underemployed, as defined in § 668.150; or

(3) A low-income individual, as defined in WIA section 101(25); or

(4) The recipient of a bona fide lay-off notice which has taken effect in the last six months or will take effect in the following six month period, who is unlikely to return to a previous industry or occupation, and who is in need of retraining for either employment with another employer or for job retention with the current employer; or

(5) An individual who is employed, but is determined by the grantee to be in need of employment and training services to obtain or retain employment that allows for self-sufficiency.

(c) If applicable, male applicants must also register or be registered for the Selective Service.

(d) For purposes of determining whether a person is a low-income individual under paragraph (b)(3) of this section, the Secretary issues guidance for the determination of family income. (WIA sec. 189(h).)

§ 668.340 What are INA grantee allowable activities?

(a) The INA grantee may provide any services consistent with the purposes of this section that are necessary to meet the needs of Native Americans preparing to enter, reenter, or retain unsubsidized employment. (WIA sec. 166(d)(1)(B).) Comprehensive workforce investment activities authorized under WIA section 166(d)(2) include:

(b) Core services, which must be delivered in partnership with the One-Stop delivery system, include:

(1) Outreach;

(2) Intake;

(3) Orientation to services available;

(4) Initial assessment of skill levels, aptitudes, abilities and supportive service needs;

(5) Eligibility certification;

(6) Job Search and placement assistance;

(7) Career counseling;

(8) Provision of employment statistics information and local, regional, and national Labor Market Information;

(9) Provision of information regarding filing of Unemployment Insurance claims;

(10) Assistance in establishing eligibility for Welfare-to-Work programs;

(11) Assistance in establishing eligibility for financial assistance for training;

(12) Provision of information relating to supportive services;

(13) Provision of performance and cost information relating to training providers and training services; and

(14) Follow-up services.

(c) Allowable intensive services which include:

(1) Comprehensive and specialized testing and assessment;

(2) Development of an individual employment plan;

(3) Group counseling;
(4) Individual counseling and career planning;
(5) Case Management for seeking training services;
(6) Short term pre-vocational services;
(7) Work experience in the public or private sector;
(8) Tryout employment;
(9) Dropout prevention activities;
(10) Supportive services; and
(11) Other services identified in the approved Two Year Plan.
(d) Allowable training services which include:
(1) Occupational skill training;
(2) On-the-job training;
(3) Programs that combine workplace training with related instruction, which may include cooperative education programs;
(4) Training programs operated by the private sector;
(5) Skill upgrading and retraining;
(6) Entrepreneurial and small business development technical assistance and training;
(7) Job readiness training;
(8) Adult basic education, GED attainment, literacy training, and English language training, provided in combination with any training services described in paragraphs (d)(1) through (8) of this section;
(9) Customized training conducted with a commitment by an employer or group of employers to employ an individual upon successful completion of training; and
(10) Educational and tuition assistance.
(e) Allowable activities specifically designed for youth are identified in section 129 of the Act and include:
(1) Improving educational and skill competencies;
(2) Adult mentoring;
(3) Training opportunities;
(4) Supportive services as defined in WIA section 101(46);
(5) Incentive programs for recognition and achievement;
(6) Opportunities for leadership, development, decision-making, citizenship and community service;
(7) Preparation for postsecondary education, academic and occupational learning, unsubsidized employment opportunities, and other effective connections to intermediaries with strong links to the job market and local and regional employers;
(8) Tutoring, study skills training, and other drop-out prevention strategies;
(9) Alternative secondary school services;
(10) Summer employment opportunities that are directly linked to academic and occupational learning;
(11) Paid and unpaid work experiences, including internships and job shadowing;
(12) Occupational skill training;
(13) Leadership development opportunities as defined in § 664.420;
(14) Follow-up services as defined in § 664.450;
(15) Comprehensive guidance and counseling, which may include drug and alcohol abuse counseling and referral; and
(16) Information and referral.
(f) In addition, allowable activities include job development and employment outreach, including:
(1) Support of the Tribal Employment Rights Office (TERO) program;
(2) Negotiation with employers to encourage them to train and hire participants;
(3) Establishment of linkages with other service providers to aid program participants;
(4) Establishment of management training programs to support tribal administration or enterprises; and
(5) Establishment of linkages with remedial education, such as Adult Basic Education (ABE), basic literacy training, and English-as-a-second-language (ESL) training programs, as necessary.
(g) Participants may be enrolled in more than one activity at a time and may be sequentially enrolled in multiple activities.
(h) INA grantees may provide any services which may be carried out by fund recipients under any provisions of the Act. (WIA section 166(d).)
(i) In addition, INA grantees must develop programs which contribute to occupational development, upward mobility, development of new careers, and opportunities for nontraditional employment. (WIA section 195(1).)

§ 668.350 Are there any restrictions on allowable activities?

(a) All occupational training must be for occupations for which there are employment opportunities in the local area or another area to which the participant is willing to relocate. (WIA sec. 134(d)(4)(A)(iii).)
(b) INA grantees must provide OJT services consistent with the definition provided in WIA section 101(31) and other limitations in the Act. Individuals in OJT must:
(1) Be compensated at the same rates, including periodic increases, as trainees or employees who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills; and (WIA sec. 181(a)(1).)
(2) Be provided benefits and working conditions at the same level and to the same extent as other trainees or employees working a similar length of time and doing the same type of work. (WIA sec. 181(b)(5).)
(c) In addition, OJT contracts under this title must not be entered into with employers who have:
(1) Received payments under previous contracts and have exhibited a pattern of failing to provide OJT participants with continued, long-term employment as regular employees with wages and employment benefits and working conditions at the same level and to the same extent as other employees working a similar length of time and doing the same work, or
(2) Who have violated paragraphs (b)(1) and/or (2) of this section. (WIA 195(4).)
(d) INA grantees are prohibited from using funds to encourage the relocation of a business as described in WIA section 181(d) and 20 CFR 667.268.
(e) INA grantees must only use funds for activities which are in addition to those that would otherwise be available to the Native American population in the area in the absence of such funds. (WIA § 195(2).)
(f) INA grantees must not spend funds on activities that displace currently employed individuals, impair existing contracts for services, or in any way affect union organizing. (WIA § 181(b).)

§ 668.360 What is the role of INA grantees in the One-Stop system?

(a) In those local workforce investment areas where there is a INA grantee field office, the INA grantee is a required partner in the local One-Stop delivery system and is subject to the provisions relating to such partners described in 20 CFR part 662. Consistent with those provisions, a Memorandum of Understanding (MOU) between the INA grantee and the Local Board over the operation of the One-Stop Center(s) in the Local Board's workforce investment area must also be executed.
(b) At a minimum, the MOU must contain provisions related to:
(1) The services to be provided through the One-Stop Service System;
(2) The methods for referral of individuals between the One-Stop operator and the INA grantee which take into account the services provided by the INA grantee and the other One-Stop partners;
(3) The exchange of information on the services available and accessible through the One-Stop system and the INA program;
(4) As necessary to provide referrals and case management services, the exchange of information on Native

American participants in the One-Stop system and the INA program;

(5) Arrangements for the funding of services provided by the One-Stop(s), consistent with the requirement that no expenditures may be made with INA program funds for individuals who are not eligible under this part.

(c) The INA grantee's Two Year Plan must describe the efforts the grantee has made to negotiate MOU's consistent with paragraph (b) of this section, for each planning cycle during which Local Boards are operating under the terms of WIA.

§ 668.370 What policies govern payments to participants, including wages, training allowances or stipends, or direct payments for supportive services?

(a) INA grantees may pay training allowances or stipends to participants for their successful participation in and completion of education or training services (except such allowance may not be provided to participants in OJT). Allowances or stipends may not exceed the Federal or State minimum wage, whichever is higher.

(b) INA grantees may not pay a participant in a training activity when the person fails to participate without good cause.

(c) If a participant in a WIA-funded activity is involved in an employer-employee relationship, including participants in OJT, that participant must be paid wages and fringe benefits at the same rates as trainees or employees who have similar training, experience and skills and which are not less than the higher of the applicable Federal, State or local minimum wage. (WIA section 181(a)(1).)

(d) In accordance with the policy described in the two-year plan, INA grantees may pay incentive bonuses to participants who meet or exceed individual employability or training goals established in writing in the individual employment plan.

(e) INA grantees must comply with other restrictions listed in WIA sections 181 through 199 which apply to all programs funded under title I of WIA.

(f) INA grantees must comply with the provisions on labor standards in WIA section 181(b).

§ 668.380 What will DOL do to strengthen the capacity of INA grantees to deliver effective services?

The Department will provide appropriate TAT, as necessary, to INA grantees. This TAT will assist INA grantees to improve program performance and enhance services to the target population(s), as resources permit. (WIA sec. 166(h)(5).)

Subpart D—Supplemental Youth Services

§ 668.400 What is the purpose of the supplemental youth services program?

The purpose of this program is to provide supplemental employment and training and related services to Native American youth on or near Indian reservations, or in Oklahoma, Alaska, and Hawaii. (WIA sec. 166(d)(2)(A)(ii).)

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

Eligible recipients for supplemental youth services funding are limited to those tribal, Alaska Native, Native Hawaiian and Oklahoma tribal grantees funded under WIA section 166(d)(2)(A)(i), or other grantees serving those areas and/or populations specified in § 668.400, that received funding under title II–B of the Job Training Partnership Act, or that are designated to serve an eligible area as specified in WIA section 166(d)(2)(A)(ii).

§ 668.420 What are the planning requirements for receiving supplemental youth services funding?

Beginning with PY 2000, eligible INA grantees must describe the supplemental youth services which they intend to provide in their Two Year Plan, (described more fully in §§ 668.710 and 668.720 of this part). This Plan includes the target population the grantee intends to serve, for example, drop-outs, juvenile offenders, and/or college students. It also includes the performance measures/standards to be utilized to measure program progress.

§ 668.430 What individuals are eligible to receive supplemental youth services?

(a) Participants in supplemental youth services activities must be Native Americans, as determined by the INA grantee according to § 668.300(a) and must meet the definition of Eligible Youth, as defined in WIA section 101(13);

(b)Youth participants must be low-income individuals, except that not more than five percent (5%) who do not meet the minimum income criteria, may be considered eligible youth if they meet one or more of the following categories:

(1) School dropouts;

(2) Basic skills deficient as defined in WIA section 101(4);

(3) Have educational attainment that is one or more grade levels below the grade level appropriate to their age group;

(4) Pregnant or parenting;

(5) Have disabilities, including learning disabilities;

(6) Homeless or runaway youth;

(7) Offenders; or

(8) Other eligible youth who face serious barriers to employment as identified by the grantee in its Plan. (WIA section 129(c)(5).)

§ 668.440 How is funding for supplemental youth services determined?

(a) Beginning with PY 2000, supplemental youth funding will be allocated to eligible INA grantees on the basis of the relative number of Native American youth between the ages of 14 and 21, inclusive, in the grantee's designated INA service area as compared to the number of Native American youth in other INA service areas.

(b) The data used to implement this formula is provided by the U.S. Bureau of the Census.

(c) The hold harmless factor described in § 668.296(c) also applies to supplemental youth services funding. This factor also will be determined in consultation with the grantee community and the Native American Employment and Training Council.

(d) The reallocation provisions of § 668.296(d) will also apply to supplemental youth services funding.

(e) Any supplemental youth services funds not allotted to a grantee or refused by a grantee may be used for the purposes outlined in § 668.296(e). Any such funds are in addition to, and not subject to the limitations on, amounts reserved under § 668.296(e).

§ 668.450 How will supplemental youth services to be provided?

(a) INA grantees may offer supplemental services to youth throughout the school year, during the summer vacation, and/or during other breaks during the school year at their discretion;

(b) The Department encourages INA grantees to work with Local Educational Agencies to provide academic credit for youth activities whenever possible;

(c) INA grantees may provide participating youth with the activities listed in 20 CFR 668.340(e).

§ 668.460 Are there performance measures and standards applicable to the supplemental youth services program?

Yes. WIA section 166(e)(5) requires that the program plan contain a description of the performance measures to be used to assess the performance of grantees in carrying out the activities assisted under this section. Specific indicators of performance and levels of performance for supplemental youth services activities will be developed by the Department in partnership with the Native American

Employment and Training Council, and transmitted to INA grantees as an administrative issuance.

Subpart E—Services to Communities

§ 668.500 What services may INA grantees provide to or for employers under section 166?

(a) INA grantees may provide a variety of services to employers in their areas. These services may include:

(1) Workforce planning which involves the recruitment of current or potential program participants, including job restructuring services;

(2) Recruitment and assessment of potential employees, with priority given to potential employees who are or who might become eligible for program services;

(3) Pre-employment training;

(4) Customized training;

(5) On-the-Job training (OJT);

(6) Post-employment services, including training and support services to encourage job retention and upgrading;

(7) Work experience for public or private sector work sites;

(8) Other innovative forms of worksite training.

(b) In addition to the services listed above, other grantee-determined services intended to assist eligible participants to obtain or retain employment may also be provided to or for employers approved in the grantee's Two Year Plan.

§ 668.510 What services may INA grantees provide to the community at large under section 166?

(a) INA grantees may provide services to the Native American communities in their designated service areas by engaging in program development and service delivery activities which:

(1) Strengthen the capacity of Native American-controlled institutions to provide education and work-based learning services to Native American youth and adults, whether directly or through other Native American institutions such as tribal colleges;

(2) Increase the community's capacity to deliver supportive services, such as child care, transportation, housing, health, and similar services needed by clients to obtain and retain employment;

(3) Use program participants engaged in education, training, work experience, or similar activities to further the economic and social development of Native American communities in accordance with the goals and values of those communities; and

(4) Engage in other community-building activities described in the INA grantee's Two Year Plan.

(b) INA grantees should develop their Two Year Plan in conjunction with, and in support of, strategic tribal planning and community development goals.

§ 668.520 Must INA grantees give preference to Indian/Native American entities in the selection of contractors or service providers?

Yes. INA grantees must give as much preference as possible to Indian organizations and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452), when awarding any contract or subgrant.

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

In general, INA grantees must follow the rules of OMB Circulars A–102 (for tribes) or A–110 (for private non-profits) when awarding contracts and/or subgrants under WIA section 166. The common rules implementing those circulars are codified for DOL-funded programs at 29 CFR part 97 (A–102) or 29 CFR part 95 (A–110), and covered in the WIA regulations at 20 CFR 667.200. These rules do not apply to OJT contract awards.

Subpart F—Accountability for Services and Expenditures

§ 668.600 To whom is the INA grantee accountable for the provision of services and the expenditure of INA funds?

(a) The INA grantee is responsible to the Native American community to be served by INA funds.

(b) The INA grantee is also responsible to the Department of Labor, which is charged by law with ensuring that all WIA funds are expended:

(1) according to applicable laws and regulations;

(2) for the benefit of the identified Native American client group; and

(3) for the purposes approved in the grantee's plan and signed grant document.

§ 668.610 How is this accountability documented and fulfilled?

(a) Each INA grantee must establish its own internal policies and procedures to ensure accountability to the INA grantee's governing body, as the representative of the Native American community(ies) served by the INA program. At a minimum, these policies and procedures must provide a system for governing body review and oversight of program plans and measures and standards for program performance.

(b) Accountability to the Department is accomplished in part through on-site program reviews (monitoring), which strengthen the INA grantee's capability to deliver effective services and protect the integrity of Federal funds.

(c) In addition to audit information, as described at § 668.850, and program reviews, accountability to the Department is documented and fulfilled by the submission of reports. These report requirements are as follows:

(1) Each INA grantee must submit an annual report on program participants and activities. This report must be received no later than 90 days after the end of the Program Year, and may be combined with the report on program expenditures. The reporting format is developed by DINAP, in consultation with the Native American Advisory Council, and published in the **Federal Register**.

(2) Each INA grantee must submit an annual report on program expenditures. This report must be received no later than 90 days after the end of the Program Year, and may be combined with the report on program participants and activities. For the purposes of report submission, a postmark or date indicating receipt by a private express delivery service is acceptable proof of timely submission.

(3) INA grantees are encouraged, but not required, to submit a descriptive narrative with their annual reports describing the barriers to successful plan implementation they have encountered. This narrative should also discuss program successes and other notable occurrences that effected the INA grantee's overall performance that year.

(4) Each INA grantee may be required to submit interim reports on program participants and activities and/or program expenditures during the Program Year. Interim reports must be received no later than 45 days after the end of the reporting period.

§ 668.620 What performance measures are in place for the INA program?

Indicators of performance measures and levels of performance in use for INA program will be those indicators and standards proposed in individual grantee plans and approved by DOL, in accordance with guidelines developed by the Department in consultation with INA grantees under WIA section 166(h)(2)(A).

§ 668.630 What are the requirements for preventing fraud and abuse under section 166?

(a) Each INA grantee must implement program and financial management procedures to prevent fraud and abuse. Such procedures must include a process which enables the grantee to take action against contractors or subgrantees to

prevent any misuse of funds. (WIA sec. 184.)

(b) Each INA grantee must have rules to prevent conflict of interest by its governing body. These conflict of interest rules must include a rule prohibiting any member of any governing body or council associated with the INA grantee from voting on any matter which would provide a direct financial benefit to that member, or to a member of his or her immediate family, in accordance with 20 CFR 667.200(a)(4) and 29 CFR 97.36(b) or 29 CFR 95.42.

(c) Officers or agents of the INA grantee must not solicit or personally accept gratuities, favors, or anything of monetary value from any actual or potential contractor, subgrantee, vendor or participant. This rule must also apply to officers or agents of the grantee's contractors and/or subgrantees. This prohibition does not apply to:

(1) Any rebate, discount or similar incentive provided by a vendor to its customers as a regular feature of its business;

(2) Items of nominal monetary value distributed consistent with the cultural practices of the Native American community served by the grantee.

(d) No person who selects program participants or authorizes the services provided to them may select or authorize services to any participant who is such a person's husband, wife, father, mother, brother, sister, son, or daughter unless:

(1)(i) The participant involved is a low income individual; or

(ii) The community in which the participant resides has a population of less than 1,000 Native American people; and

(2) The INA grantee has adopted and implemented the policy described in the Two Year Plan to prevent favoritism on behalf of such relatives.

(e) INA grantees are subject to the provisions of 41 U.S.C. 53 relating to kickbacks.

(f) No assistance provided under this Act may involve political activities. (WIA section 195(6).)

(g) INA grantees may not use funds under this Act for lobbying as provided in 29 CFR part 93.

(h) The provisions of 18 U.S.C. 665 and 666 regarding embezzlement apply to programs under WIA.

(i) Sectarian activities involving WIA funding or participants are prohibited.

(j) INA grantees are prohibited from discriminatory practices as outlined at WIA section 188, and the regulations implementing WIA section 188. However, this does not affect the legal requirement that all INA participants be Native American. Also, INA grantees are not obligated to serve populations other than those for which they were designated.

§ 668.640 What grievance systems must a section 166 program provide?

INA grantees must establish grievance procedures consistent with the requirements of WIA section 181(c) and 20 CFR 667.600.

§ 668.650 Can INA grantees exclude eligible segments of the population?

(a) No. INA grantees cannot exclude segments of the eligible population. INA grantees must document in their Two Year Plan that a system is in place to afford all members of the eligible population within the service area for which the grantee was designated an equitable opportunity to receive WIA services and activities.

(b) Nothing in this section restricts the ability of INA grantees to target subgroups of the eligible population (for example, the disabled, substance abusers, TANF recipients, or similar categories), as outlined in an approved Two Year Plan.

Subpart G—Section 166 Planning/ Funding Process

§ 668.700 What process must an INA grantee use to plan its employment and training services ?

(a) The INA grantee may utilize the planning procedures it uses to plan other activities and services.

(b) However, in the process of preparing its Two Year Plan for Native American WIA services, the INA grantee must consult with:

(1) Customers or prospective customers of such services;

(2) Prospective employers of program participants or their representatives;

(3) Service providers, including local educational agencies, which can provide services which support or are complementary to the grantee's own services; and

(4) Tribal or other community officials responsible for the development and administration of strategic community development efforts.

§ 668.710 What planning documents must an INA grantee submit to the Department?

Each grantee receiving funds under WIA sec. 166 must submit to DINAP a comprehensive services plan and a projection of participant services and expenditures covering the two-year planning cycle. The Department will, in consultation with the Native American Advisory Council, issue budget and planning instructions which grantees must use when preparing their plan.

§ 668.720 What information must these planning documents contain?

(a) The comprehensive services plan must cover the two Program Years included within a designation cycle. According to planning instructions issued by the Department, the comprehensive services plan must describe in narrative form:

(1) The specific goals of the INA grantee's program for the two Program Years involved;

(2) The method the INA grantee will use to target its services on specific segments of its service population;

(3) The array of services which the INA grantee intends to make available;

(4) The system the INA grantee will use to be accountable for the results of its program services. Such results must be judged in terms of the outcomes for individual participants and/or the benefits the program provides to the Native American community(ies) which the INA grantee serves. Plans must include the performance information required by § 668.620;

(5) The ways in which the INA grantee will seek to integrate or coordinate and ensure nonduplication of its employment and training services with:

(i) The One-Stop delivery system in its local workforce investment area, including a description of any MOU's which affect the grantee's participation;

(ii) Other services provided by local Workforce Investment Boards;

(iii) Other program operators;

(iv) Other services available within the grantee organization; and

(v) Other services which are available to Native Americans in the community, including planned participation in the One-Stop system.

(b) Beginning in PY 2000, eligible INA grantees must include in their plan narratives a description of activities planned under the supplemental youth program, including items described in paragraph (a) (1) through (5) of this section.

(c) INA grantees must include a detailed budget of proposed Administrative Costs, utilizing the definition at 20 CFR 667.220, to use as a basis of negotiation with DINAP.

(d) INA grantees' plans must contain a projection of participant services and expenditures for each Program Year, consistent with guidance issued by the Department.

(e) For PY 1999, INA grantees who are early implementers under WIA must prepare and submit an Annual Plan rather than a Two Year Plan.

§ 668.730 When must these plans be submitted?

(a) The two-year plans are due at a date specified by DINAP in the year in which the two-year designation cycle begins. The Department will announce exact submission dates in the biennial planning instructions.

(b) Plans from INA grantees who are eligible for supplemental youth services funds must include their supplemental youth plans as part of their regular Two Year Plan. For PY 1999, a separate youth plan is required, and INA grantees will be required to submit their plans early, to allow for prompt funding of the youth component.

(c) INA grantees must submit modifications for the second year reflecting exact funding amounts, after the individual allotments have been determined. They will be submitted at a time determined by the Department, but no later than June 1 prior to the beginning of the second year of the designation cycle.

§ 668.740 How will the Department review and approve such plans?

(a) The Department will approve a grantee's planning documents prior to the date on which funds for the program become available unless:

(1) The planning documents do not contain the information specified in these regulations; or

(2) The services which the INA grantee proposes are not permitted under WIA or applicable regulations.

(b) The Department may approve a portion of the plan, and disapprove other portions. The grantee also has the right to appeal the Department's decision to the Office of the Administrative Law Judges under the procedures at 20 CFR 667.800 or 667.840. While the INA grantee exercises its right to appeal, the grantee must implement the approved portions of the plan.

(c) If the Department disapproves all or part of an INA grantee's plan, and that disapproval is sustained in the appeal process, the INA grantee will be given the opportunity to amend its plan so that it can be approved.

(d) If an INA grantee's plan is amended but is still disapproved, the grantee will have the right to appeal the Department's decision to the Offices of the Administrative Law Judges under the procedures at 20 CFR 667.800 or 667.840.

§ 668.750 Under what circumstances can the Department or the INA grantee modify the terms of the grantee's plan(s)?

(a) The Department may unilaterally modify the INA grantee's plan to add funds or, if required by Congressional action, to reduce the amount of funds available for expenditure.

(b) The INA grantee may request Departmental approval to modify its plan to add, expand, delete, or diminish any service allowable under these regulations. The INA grantee may modify its plan without Departmental approval, unless the modification reduces the total number of participants to be served annually under the grantee's program by a number which exceeds 25 percent of the participants previously proposed to be served, or by 25 participants, whichever is larger.

(c) The Department will act upon any modification within thirty (30) calendar days of receipt of the proposed modification. In the event that further clarification or modification is required, the Department may extend the thirty (30) day time frame to conclude appropriate negotiations.

Subpart H—Administrative Requirements

§ 668.800 What systems must an INA grantee have in place to administer an INA program?

(a) Each INA grantee must have a written system describing the procedures the grantee uses with respect to:

(1) The hiring and management of personnel paid with program funds;

(2) The acquisition and management of property purchased with program funds;

(3) Financial management practices;

(4) A participant grievance system which meets the requirements in section 181(c) of WIA and 20 CFR 667.600; and

(5) A participant records system.

(b) Participant records systems must include:

(1) A written or computerized record containing all the information used to determine the person's eligibility to receive program services;

(2) The participant's signature certifying that all the eligibility information he or she provided is true to the best of his/her knowledge; and

(3) The information necessary to comply with all program reporting requirements.

§ 668.810 What types of costs are allowable expenditures under the INA program?

Rules relating to allowable costs under WIA are covered in the consolidated regulations at 20 CFR 667.200 through 667.220.

§ 668.820 What rules apply to administrative costs under the INA program?

The definition and treatment of administrative costs are covered in the consolidated regulations at 20 CFR 667.210 and 667.220.

§ 668.830 How should INA program grantees classify costs?

Cost classification is covered in the WIA regulations at 20 CFR 667.200 through 667.220. For purposes of the INA program, program costs also include costs associated with other activities such as Tribal Employment Rights Office (TERO), and supportive services as defined in WIA sec. 101(46).

§ 668.840 What cost principles apply to INA funds?

The cost principles described in OMB Circulars A–87 (for tribal governments), A–122 (for private non-profits), and A–21 (for educational institutions), and the regulations at 20 CFR 667.200(c), apply to INA grantees, depending on the nature of the grantee organization.

§ 668.850 What audit requirements apply to INA grants?

The audit requirements established under the Department's regulations at 29 CFR part 99, which implement OMB Circular A–133, apply to all Native American WIA grants. These regulations, for all of WIA, are cited at 20 CFR 667.200(b). Audit resolution procedures are covered at 20 CFR 667.500 and 667.510.

§ 668.860 What cash management procedures apply to INA grant funds?

INA grantees must draw down funds only as they actually need them. The U.S. Department of Treasury regulations which implement the Cash Management Improvement Act, found at 31 CFR part 205, apply by law to most recipients of Federal funds. Special rules may apply to those grantees required to keep their funds in interest-bearing accounts, and to grantees participating in the demonstration under Pub. L. 102–477.

§ 668.870 What is ''program income'' and how is it regulated in the INA program?

(a) Program income is defined and regulated by WIA section 195(7), 20 CFR 667.200(a)(5) and the applicable rules in 29 CFR parts 95 and 97.

(b) For grants made under this part, program income does not include income generated by the work of a work experience participant in an enterprise, including an enterprise owned by an Indian tribe or Alaska Native entity, whether in the public or private sector.

(c) Program income does not include income generated by the work of an OJT

participant in an establishment under paragraph (b) of this section.

Subpart I—Miscellaneous Program Provisions

§ 668.900 Does the WIA provide regulatory and/or statutory waiver authority?

Yes. WIA section 166(h)(3) permits waivers of any statutory or regulatory requirement imposed upon INA grantees (except for the areas cited in § 668.920). Such waivers may include those necessary to facilitate WIA support of long term community development goals.

§ 668.910 What information is required to document a requested waiver?

To request a waiver, an INA grantee must submit a plan indicating how the waiver will improve the grantee's WIA program activities. The Department will provide further guidance on the waiver process, consistent with the provisions of WIA section 166(h)(3).

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

Requirements relating to:
(a) Wage and labor standards;
(b) Worker rights;
(c) Participation and protection of workers and participants;
(d) Grievance procedures;
(e) Judicial review; and
(f) Non-discrimination may not be waived. (WIA sec 166(h)(3)(A).)

§ 668.930 May INA grantees combine or consolidate their employment and training funds?

Yes. INA grantees may consolidate their employment and training funds under WIA with assistance received from related programs in accordance with the provisions of the Indian Employment, Training and Related Services Demonstration Act of 1992 (Pub. L. 102–477) (25 U.S.C. 3401 *et seq.*). Also, Federally-recognized tribes that administer INA funds and funds provided by more than one State under other sections of WIA title I may enter into an agreement with the Governors to transfer the State funds to the INA program. (WIA sec. 166(f) and (h)(6).)

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

The Native American Employment and Training Council is a body composed of representatives of the grantee community which advises the Secretary on all aspects of Native American employment and training program implementation. WIA section 166(h)(4) continues the Council essentially as it is currently constituted, with the exception that all the Council members no longer have to be Native American. However, the nature of the consultative process remains essentially unchanged. The Department continues to support the Council.

PART 669—MIGRANT AND SEASONAL FARMWORKER PROGRAMS UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

Subpart A—Purpose and Definitions

Sec.
669.100 What is the purpose of the Migrant and Seasonal Farmworker (MSFW) Program established under WIA section 167?
669.110 What definitions apply to this program?
669.120 How is the MSFW program administered by the Department of Labor?
669.130 What unit within the Department administers the Migrant and Seasonal Farmworker programs funded under WIA section 167?
669.140 How does the DSFP assist the MSFW grantee organizations serve farmworker customers?
669.150 How are regulations established for this program?
669.160 How does the Department consult with MSFW organizations in developing rules, regulations and standards of accountability and other policy guidance for the MSFW Programs?
669.170 What WIA regulations apply to the programs funded under WIA section 167?

Subpart B—MSFW Program's Service Delivery System

669.200 Who is eligible to receive a MSFW grant?
669.210 How does an eligible entity become a MSFW grantee?
669.220 What is the role of the MSFW grantee in the One-Stop delivery system?
669.230 Can a MSFW grantee's designation be terminated?
669.240 How will the Department use funds appropriated under WIA section 167 for MSFW programs?

Subpart C—MSFW Program Customers and Available Program Services

669.300 What are the general responsibilities of the MSFW grantees?
669.310 What are the basic components of a MSFW service delivery strategy?
669.320 Who is eligible to receive services under the MSFW Program?
669.330 How are services delivered to the customer?
669.340 What core services are available to eligible MSFWs?
669.350 How are core services delivered to MSFWs?
669.360 May grantees provide emergency assistance to MSFWs?
669.370 What intensive services may be provided to eligible MSFWs?
669.380 What is the objective assessment that is authorized as an intensive service?
669.400 What are the elements of the IEP that is authorized as an intensive service?
669.410 What training services may be provided to eligible MSFWs?
669.420 What must be included in an on-the-job training contract?

Subpart D—Performance Accountability, Planning and Waiver Provision

669.500 What performance measures and standards apply to the MSFW Program?
669.510 What planning documents must a MSFW grantee submit to the Department?
669.520 What information is required in the MSFW grant plans?
669.530 What are the submission dates for these plans?
669.540 Under what circumstances are the terms of the grantee's plan modified by the grantee or the Department?
669.550 How are costs classified under the MSFW Program?
669.560 Are there regulatory and/or statutory waiver provisions that apply to WIA section 167?
669.570 What information is required to document a requested waiver?

Subpart E—The MSFW Youth Program

669.600 What is the purpose of the WIA section 167 MSFW Youth Program?
669.610 What is the relationship between the MSFW youth program and the MSFW program authorized at WIA section 167?
669.620 How do the MSFW youth program regulations apply to the MSFW program authorized under WIA section 167?
669.630 What are the requirements for designation as a ''MSFW youth program grantee'?
669.640 What is the process for applying for designation as a MSFW youth program grantee?
669.650 How are MSFW youth funds allocated to section 167 grantees?
669.660 What planning documents and information are required in the application for MSFW youth grants and when must they be filed?
669.670 Who is eligible to receive services under the section 167 MSFW youth program?
669.680 What activities and services may be provided under the MSFW youth program?

Authority: section 506(c), Pub. L. 105–220; 20 U.S.C. 9276(c)

Subpart A—Purpose and Definitions

§ 669.100 What is the purpose of the Migrant and Seasonal Farmworker (MSFW) program established under WIA section 167?

The purpose of the MSFW Program is to strengthen the ability of eligible migrant and seasonal farmworkers and their families to achieve economic self-sufficiency. This part provides the regulatory requirements applicable to the expenditure of WIA section 167 funds for such program.

§ 669.110 What definitions apply to this program?

In addition to the definitions found in WIA secs. 101 and 167 and in 20 CFR 660.330, the following definitions apply to programs under this subpart:

Allowances means direct payments, which must not exceed the higher of the State or Federal minimum wage, made to MSFW participants during their enrollment to enable them to participate in training services.

Capacity enhancement means the technical assistance afforded to grantees and grantee staff by the Department to improve the quality of the program and the delivery of program services to MSFWs.

Department means the U.S. Department of Labor, including its agencies and organizational units, unless otherwise indicated.

Disadvantaged means a farmworker whose income, for any 12 consecutive months out of the 24 months immediately before the farmworker applies for the program, does not exceed the higher of either the poverty line or 70 percent of the lower living standard income level.

DSFP means the Division of Seasonal Farmworker Programs within the Employment and Training Administration of the Department, or a successor organizational unit.

Eligibility determination period means any consecutive 12-month period within the 24-month period immediately preceding the date of application for the MSFW program by the applicant farmworker.

Emergency Assistance means assistance that addresses immediate needs of farmworkers and their families, provided by MSFW grantees. Except for evidence to support legal working status in the United States and Selective Service registration, where applicable, the applicant's self-attestation is accepted as eligibility for emergency assistance.

Farmwork means those occupations in the agricultural industries identified by the Department for inclusion in its allocation formula for MSFW-funded programs.

MSFW program grantee means an entity which is awarded a WIA grant directly from the Department to carry out the MSFW program in one or more designated States or substate areas.

MSFW means a Migrant or Seasonal Farmworker under WIA section 167.

MOU means Memorandum of Understanding.

Self-certification means a farmworker's signed attestation that the information he/she submits to demonstrate eligibility for the MSFW program is true and accurate.

Service area means the geographical jurisdiction in which a WIA section 167 grantee is designated to operate.

Work experience means a planned, structured learning experience that takes place in a workplace for a limited period of time. Work experience may paid or unpaid, as appropriate.

§ 669.120 How is the MSFW program administered by the Department of Labor?

This program is centrally administered by the Department of Labor in a manner consistent with the requirements of WIA section 167. As described in § 669.210, the Secretary designates grantees using procedures consistent with standard Federal government competitive procedures. The Secretary awards other grants and contracts using similar competitive procedures.

§ 669.130 What unit within the Department administers the Migrant and Seasonal Farmworker programs funded under WIA section 167?

The Department has designated the Division of Seasonal Farmworker Programs (DSFP), or its successor organization, within the Employment and Training Administration, as the organizational unit that administers MSFW programs at the Federal level.

§ 669.140 How does the DSFP assist the MSFW grantee organizations serve farmworker customers?

The Department provides technical assistance and training to MSFW grantees, for the purposes of program implementation and program performance management leading to enhancement of services to and continuous improvement in the employment outcomes of farmworkers.

§ 669.150 How are regulations established for this program?

In developing regulations for WIA section 167, the Secretary consults with the Migrant and Seasonal Farmworker Employment and Training Advisory Committee. The regulations and program guidance consider the economic circumstances and demographics of eligible migrant and seasonal farmworkers.

§ 669.160 How does the Department consult with MSFW organizations in developing rules, regulations and standards of accountability and other policy guidance for the MSFW Programs?

(a) The Department considers the MSFW grantee community as a full partner in the development of policies for the MSFW programs under the Act.

(b) The Department has established and continues to support the MSFW Employment and Training Advisory Committee. Through the Advisory Committee, the Department actively seeks and considers the views of the grantee community prior to establishing policies and/or program regulations, according to the requirements of WIA section 167.

§ 669.170 What WIA regulations apply to the programs funded under WIA section 167?

(a) The regulations found in this subpart;

(b) The general administrative requirements found in 20 CFR part 667, including the regulations concerning Complaints, Investigations and Hearings found at 20 CFR part 667, subpart E through subpart H, which cover programs under WIA section 167;

(c) The Department's regulations codifying the common rules implementing Office of Management and Budget (OMB) Circulars, which generally apply to Federal programs carried out by State and local governments and nonprofit organizations at 29 CFR parts 95, 96, 97, and 99, as applicable.

Subpart B—MSFW Program's Service Delivery System

§ 669.200 Who is eligible to receive a MSFW grant?

(a) To be eligible to receive a grant under this section, an entity must have:

(1) An understanding of the problems of eligible migrant and seasonal farmworkers and their dependents;

(2) A familiarity with the agricultural industry and the labor market needs of the geographic area to be served;

(3) The capacity to effectively administer a diversified program of workforce investment activities and related assistance for eligible migrant and seasonal farmworkers (including farmworker youth) as described in paragraph (b) of this section.

(b) For purposes of paragraph (a)(3) of this section, an entity's ''capacity to effectively administer'' a program may be demonstrated by:

(1) Organizational experience; or

(2) Significant experience of its key staff in administering similar programs.

§ 669.210 How does an eligible entity become a MSFW grantee?

To become a MSFW grantee and receive a grant under this subpart, the entity must respond to a Solicitation for Grant Applications (SGA). The SGA may contain additional requirements for the grant application or the grantee's two-year plan. Under the SGA, grantees

will be selected using standard Federal Government competitive procedures. The entity's proposal must describe a two-year strategy for meeting the needs of eligible migrant and seasonal farmworkers in the geographic area the entity seeks to serve.

§ 669.220 What is the role of the MSFW grantee in the One-Stop delivery system?

(a) In those local areas where there is a grantee MSFW field office, the grantee is a required partner of the local One-Stop delivery system and is subject to the provisions relating to such partners described in 20 CFR part 662. Consistent with those provisions, the grantee and the Local Board must negotiate an MOU which sets forth their respective responsibilities for making the full range of core services available to farmworkers. In local areas without a grantee MSFW field office but with a large concentration of MSFWs, the grantee should consider the availability of electronic connections and other means to participate in the One-stop system in that area, in order to serve those individuals.

(b) The MOU should reflect appropriate and equitable services to MSFWs, and may include costs of services to MSFWs incurred by the One-Stop that extend beyond Wagner-Peyser funded services and activities.

§ 669.230 Can a MSFW grantee's designation be terminated?

Yes, a grantee's designation may be terminated for cause:

(a) By the Secretary, in emergency circumstances when such action is necessary to protect the integrity of Federal funds or ensure the proper operation of the program. Any grantee so terminated will be provided with written notice and an opportunity for a hearing within 30 days after the termination (WIA sec. 184(e).); or

(b) By the Grant Officer, if there is a substantial or persistent violation of the requirements in the Act or these regulations. In such a case, the Grant Officer must provide the grantee with 60 days prior written notice, stating the reasons why termination is proposed, and the applicable appeal procedures.

§ 669.240 How will the Department use funds appropriated under WIA section 167 for MSFW programs?

(a) At least 94 percent of the funds appropriated each year for WIA section 167 activities must be allocated to State service areas, based on the distribution of the eligible MSFW population determined under a formula which has been published in the **Federal Register**. Grants are awarded under the competitive process for the provision of services to eligible farmworkers within each service area.

(b) The balance, 6 percent of the appropriated funds, will be used for discretionary purposes for such activities as grantee technical assistance and support of farmworker housing activities.

Subpart C—MSFW Program Customers and Available Program Services

§ 669.300 What are the general responsibilities of the MSFW grantees?

Each grantee is responsible for providing needed services in accordance with a service delivery strategy described in its approved grant plan. These services must reflect the needs of the MSFW population in the service area and include the services and training activities that are necessary to achieve each participant's employment goals.

§ 669.310 What are the basic components of a MSFW service delivery strategy?

The MSFW service delivery strategy must include:

(a) A customer-centered case management approach;

(b) The provision of workforce investment activities, which include, core services, intensive services, and training services as described in WIA section 134, as appropriate;

(c) The arrangements under the MOUs with the applicable Local Workforce Investment Boards for the delivery of core services to MSFWs.

§ 669.320 Who is eligible to receive services under the MSFW Program?

Disadvantaged migrant and seasonal farmworkers, as defined in § 669.110, and their dependents are eligible for services funded by the MSFW program.

§ 669.330 How are services delivered to the customer?

To ensure that all services are focused on the customer's needs, services are provided through a case-management approach and may include: Core, intensive and training services; and related assistance, which includes emergency assistance and supportive services. The basic services and delivery of case-management activities are further described at §§ 669.340 through 669.410 of this subpart. Consistent with 20 CFR part 663, prior to intensive services, a participant must receive at least one core service, and, prior to training services, a participant must receive at least one intensive service.

§ 669.340 What core services are available to eligible MSFWs?

The core services identified in WIA section 134(d)(2).

§ 669.350 How are core services delivered to MSFWs?

(a) The full range of core services are available to MSFWs, as well as other individuals, at One-Stop Centers as described in 20 CFR part 662.

(b) Where a MSFW field office is located within the workforce investment area of a One-Stop center, core services must be made available through the One-Stop delivery system, as determined in the required MOU between the Local Board and the MSFW grantee.

§ 669.360 May grantees provide emergency assistance to MSFWs?

(a) Yes. Emergency assistance (as defined in § 669.110 of this part) is a form of the related assistance that is authorized under WIA section 167(d) and may be provided by a grantee as described in the grant plan.

(b) In providing emergency assistance, the MSFW may use an abbreviated eligibility determination process that accepts the applicant's self-attestation as final evidence of eligibility, except that self-attestation may not be used to establish the requirements of legal working status in the United States, and Selective Service registration, where applicable.

§ 669.370 What intensive services may be provided to eligible MSFWs?

(a) Intensive services available to farmworkers include those described in WIA section 134(d)(3)(C).

(b) Intensive services may also include:

(1) Dropout prevention activities;

(2) Allowance payments;

(3) Work experience, which:

(i) Is designed to promote the development of good work habits and basic work skills at the work-site (work experience may be conducted with public and private non-profit and private for-profit sectors); and

(ii) Compensates participants at no less than the applicable State or Federal minimum wage.

(4) Literacy and English-as-a-Second language; and

(5) Other services identified in the approved grant plan.

§ 669.380 What is the objective assessment that is authorized as an intensive service?

(a) An objective assessment is a procedure designed to comprehensively assess the skills, abilities, and interests of each employment and training

participant through the use of diagnostic testing and other assessment tools. The methods used by the grantee in conducting the objective assessment may include:

(1) Structured in-depth interviews;

(2) Skills and aptitude assessments;

(3) Performance assessments (for example, skills or work samples, including those that measure interest and capability to train in nontraditional employment);

(4) Interest or attitude inventories;

(5) Career guidance instruments;

(6) Aptitude tests; and

(7) Basic skills tests.

(b) The objective assessment is an ongoing process that requires the grantee staff to remain in close consultation with each participant to continuously obtain current information about the participant's progress that may be relevant to his/her Individual Employment Plan (IEP).

§ 669.400 What are the elements of the IEP that is authorized as an intensive service?

The elements of the IEP are:

(a) Joint development: The grantee develops the IEP in partnership with the participant;

(b) Customer focus: The combination of services chosen with the participant must be consistent with the results of any objective assessment, responsive to the expressed goals of the participant, and must include periodic evaluation of planned goals and a record of accomplishments in consultation with the participant;

(c) Length/type of service: The type and duration of intensive or training services must be based upon:

(1) The employment/career goal;

(2) Referrals to other programs for specified activities; and

(3) The delivery agents and schedules for intensive services, training and training-related supportive services; and

(d) Privacy: As a customer-centered case management tool, an IEP is a personal record and must receive confidential treatment.

§ 669.410 What training services may be provided to eligible MSFWs?

(a) Training services include those described in WIA sections 134(d)(4)(D) and 167(d), and may be described in the IEP and may include:

(1) On-the-job training activities under a contract between the participating employer and the grantee;

(2) Workplace safety and farmworker pesticide training;

(3) Housing development assistance;

(4) Training-related supportive services; and

(b) Other training activities identified in the approved grant plan.

§ 669.420 What must be included in an on-the-job training contract?

At a minimum, the on-the-job training contract must include:

(a) The occupation(s) for which training is to be provided;

(b) The duration of training;

(c) The wage rate to be paid to the trainee;

(d) The rate of reimbursement;

(e) The maximum amount of reimbursement;

(f) A training outline that reflects the work skills required for the position;

(g) An outline of any other separate classroom training that may be provided by the employer;

(h) Application of the general program requirements of WIA section 195(4) and section 101(31); and

(i) The employer's agreement to maintain and make available time and attendance, payroll and other records to support amounts claimed by the employer for reimbursement under the OJT contract;

Subpart D—Performance Accountability, Planning and Waiver Provision

§ 669.500 What performance measures and standards apply to the MSFW Program?

(a) The MSFW program will use the core indicators of performance common to the adult and youth programs, described in 20 CFR part 666. The levels of performance for the farmworker indicators will be established pursuant to a negotiation between the Department and the grantee. The levels must take into account the characteristics of the population to be served and the economic conditions in the service area. Proposed levels of performance are to be included in the grantee plan submission, and the agreed to levels must be included in the approved plan.

(b) The Department may develop additional performance indicators with appropriate levels of performance for evaluating programs that serve farmworkers and which are reflective of the State service area economy and local demographics of eligible MSFWs. The levels of performance for these additional indicators must be negotiated with the grantee and included in the approved plan.

§ 669.510 What planning documents must a MSFW grantee submit to the Department?

Each grantee receiving WIA section 167 program funds must submit to DSFP a comprehensive service delivery plan and a projection of participant services and expenditures covering the two-year designation cycle.

§ 669.520 What information is required in the MSFW grant plans?

An MSFW grantee's biennial plan must describe:

(a) The employment and education needs of the farmworker population to be served;

(b) The manner in which proposed services to farmworkers and their families will strengthen their ability to obtain or retain employment or stabilize their agricultural employment;

(c) The related assistance and supportive services to be provided and the manner in which such assistance and services are to be coordinated with other available services;

(d) The performance indicators and proposed levels of performance used to assess the performance of such entity, including the specific goals of the grantee's program for the two Program Years involved;

(e) The method the grantee will use to target its services on specific segments of the eligible population, as appropriate;

(f) The array of services which the grantee intends to make available, with costs specified on forms prescribed by the Department. These forms will indicate how many participants the grantee expects to serve, by activity, the results expected under the grantee's plan, and the anticipated expenditures by cost category; and

(g) Its response to any other requirements set forth in the SGA issued under § 669.210 of this part.

§ 669.530 What are the submission dates for these plans?

Plan submission dates will be announced by the Department in the SGA issued under § 669.220 of this part.

§ 669.540 Under what circumstances are the terms of the grantee's plan modified by the grantee or the Department?

(a) Plans must be modified to reflect the funding level for the second year of the designation cycle. Modifications for second year funding must be submitted at a time to be determined by the Department, generally no later than June 1 prior to the beginning of the second year of the designation cycle.

(b) The Department may unilaterally modify the grantee's plan to add funds or, if the total amount of funds available for allotment is reduced by Congress, to reduce each grantee's grant amount.

(c) The grantee may modify its plan to add, delete, expand, or reduce any part of the program plan or allowable activities. Such modifications may be made by the grantee without Departmental approval except where the modification reduces the total number

of participants to be served annually under intensive and/or training services by 15 percent or more, in which case the plan may only be modified with Departmental approval.

(d) If the grantee is approved for a regulatory waiver under §§ 669.560 and 669.570, the grantee must submit a modification of its service delivery plan to reflect the effect of the waiver.

§ 669.550 How are costs classified under the MSFW Program?

Costs are classified as follows:

(a) Administrative costs, as defined in 20 CFR 667.220; and

(b) Program costs, which are all other costs not defined as administrative.

Program costs must be classified and reported in the following categories:

(1) Related assistance including emergency assistance and supportive services, including allocated staff costs; and

(2) All other program services, including allocated staff costs.

§ 669.560 Are there regulatory and/or statutory waiver provisions that apply to WIA section 167?

(a) The statutory waiver provision at WIA section 189(i) does not apply to WIA section 167.

(b) MSFW grantees may request waiver of any regulatory provisions only when such regulatory provisions are:

(1) Not required by WIA;

(2) Not related to wage and labor standards, nondisplacement protection, worker rights, participation and protection of workers and participants, and eligibility of participants, grievance procedures, judicial review, nondiscrimination, allocation of funds, procedures for review and approval of plans; and

(3) Not related to the key reform principles embodied in WIA, described in 20 CFR 661.400.

§ 669.570 What information is required to document a requested waiver?

(a) To request a waiver, a grantee must submit a waiver plan that:

(1) Describes the goals of the waiver, the expected programmatic outcomes, and how the waiver will improve the provision of WIA activities;

(2) Is consistent with guidelines established by the Department and the waiver provisions at 20 CFR 661.400 through 661.420; and

(b) Includes a modified service delivery plan reflecting the effect of requested waiver.

Subpart E—The MSFW Youth Program

§ 669.600 What is the purpose of the WIA section 167 MSFW Youth Program?

The purpose of the MSFW youth program is to provide an effective and comprehensive array of educational opportunities, employment skills, and life enhancement activities to at-risk and out-of-school MSFW youth that lead to success in school, economic stability and development into productive members of society.

§ 669.610 What is the relationship between the MSFW youth program and the MSFW program authorized at WIA section 167?

The MSFW youth program is funded under WIA section 127(b)(1)(A)(iii) to provide farmworker youth activities under the auspices of WIA section 167. These funds are specifically earmarked for MSFW youth. Funds provided for the section 167 program may also be used for youth, but are not limited to this age group.

§ 669.620 How do the MSFW youth program regulations apply to the MSFW program authorized under WIA section 167?

(a) This subpart applies only to the administration of grants for MSFW youth programs funded under WIA section 127(b)(1)(A)(iii).

(b) The regulations for the MSFW program in this part apply to the administration of the MSFW youth program, except as modified in this subpart.

§ 669.630 What are the requirements for designation as a ''MSFW youth program grantee''?

Any entity may apply for designation as a ''MSFW youth program grantee'' consistent with requirements described in the SGA. The Department gives special consideration to an entity in any service area for which the entity has been designated as a WIA section 167 MSFW program grantee.

§ 669.640 What is the process for applying for designation as a MSFW youth program grantee?

(a) To apply for designation as a MSFW youth program grantee, entities must respond to an SGA by submitting a plan that meets the requirements of WIA section 167(c)(2) and describes a two-year strategy for meeting the needs of eligible MSFW youth in the service area the entity seeks to serve.

(b) The designation process is conducted competitively (subject to § 669.210) through a selection process distinct from the one used to select WIA section 167 MSFW program grantees.

§ 669.650 How are MSFW youth funds allocated to section 167 grantees?

The allocation of funds among entities designated as WIA section 167 MSFW Youth Program grantees is based on the comparative merits of the applications, in accordance with criteria set forth in the SGA. However, the Secretary may include criteria in the SGA that promote a geographical distribution of funds and that encourages both large- and small-scale programs.

§ 669.660 What planning documents and information are required in the application for MSFW youth grants and when must they be filed?

The required planning documents and other required information and the submission dates for filing are described in the SGA.

§ 669.670 Who is eligible to receive services under the section 167 MSFW youth program?

Disadvantaged youth, ages 14 through 21, who are individually eligible or are members of eligible families under the WIA sec. 167 MSFW program may receive these services.

§ 669.680 What activities and services may be provided under the MSFW youth program?

(a) Based on an evaluation and assessment of the needs of MSFW youth participants, grantees may provide activities and services to MSFW youth that include:

(1) Intensive services and training services, as described in §§ 669.400 and 669.410 of this part;

(2) Life skills activities which may include self and interpersonal skills development;

(3) Community service projects;

(4) Small business development technical assistance and training in conjunction with entrepreneurial training;

(5) Supportive services; and

(b) Other activities and services that conform to the use of funds for youth activities described in 20 CFR part 664.

PART 670—THE JOB CORPS UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

Subpart A—Scope and Purpose

Sec.

Authority: Sec. 506(c), Pub. L. 105–220; 20 U.S.C. 9276(c).

Subpart A—Scope and Purpose

§ 670.100 What is the scope of this part?

The regulations in this part are an outline of the requirements that apply to the Job Corps program. More detailed policies and procedures are contained in a Policy and Requirements Handbook issued by the Secretary. Throughout this part, phrases like ''according to instructions (procedures) issued by the Secretary'' refer to the Policy and Requirements Handbook and other Job Corps directives.

§ 670.110 What is the Job Corps program?

Job Corps is a national program that operates in partnership with States and communities, local Workforce Investment Boards, youth councils, One-Stop Centers and partners, and other youth programs to provide education and training, primarily in a residential setting, for low income young people. The objective of Job Corps is to provide young people with the skills they need to obtain and hold a job, enter the Armed Forces, or enroll in advanced training or further education.

§ 670.120 What definitions apply to this part?

The following definitions apply to this part:

Absent Without Official Leave (AWOL) means an adverse enrollment status to which a student is assigned based on extended, unapproved absence from his/her assigned center or off-center place of duty. Students do not earn Job Corps allowances while in AWOL status.

Applicable local board means a local Workforce Investment Board that:

(1) works with a Job Corps center and provides information on local demand occupations, employment opportunities, and the job skills needed to obtain the opportunities, and

(2) serves communities in which the graduates of the Job Corps seek employment when they leave the program.

Capital improvement means any modification, addition, restoration or other improvement:

(1) Which increases the usefulness, productivity, or serviceable life of an existing site, facility, building, structure, or major item of equipment;

(2) Which is classified for accounting purposes as a ''fixed asset;'' and

(3) The cost of which increases the recorded value of the existing building, site, facility, structure, or major item of equipment and is subject to depreciation.

Center means a facility and an organizational entity, including all of its parts, providing Job Corps training and designated as a Job Corps center.

Center operator means a Federal, State or local agency, or a contractor that runs a center under an agreement or contract with DOL.

Civilian conservation center (CCC) means a center operated on public land under an agreement between DOL and another Federal agency, which provides, in addition to other training and assistance, programs of work-based learning to conserve, develop, or manage public natural resources or public recreational areas or to develop community projects in the public interest.

Contract center means a Job Corps center operated under a contract with DOL.

Contracting officer means the Regional Director or other official authorized to enter into contracts or agreements on behalf of DOL.

Enrollee means an individual who has voluntarily applied for, been selected for, and enrolled in the Job Corps program, and remains with the program, but has not yet become a graduate. Enrollees are referred to as ''students'' in this part.

Enrollment means the process by which individual formally becomes a student in the Job Corps program.

Graduate means an enrollee who has:

(1) Completed the requirements of a vocational training program, or received a secondary school diploma or its equivalent as a result of participating in the Job Corps program; and

(2) Achieved job readiness and employment skills as a result of participating in the Job Corps program.

Individual with a disability means an individual with a disability as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102).

Interagency agreement means a formal agreement between DOL and another Federal agency administering and operating centers. The agreement establishes procedures for the funding, administration, operation, and review of those centers as well as the resolution of any disputes.

Job Corps means the agency of the Department established by section 143 of the Workforce Investment Act of 1998 (WIA) (20 U.S.C. 9201) to perform those functions of the Secretary of Labor set forth in subtitle C of WIA Title I.

Job Corps Director means the chief official of the Job Corps or a person authorized to act for the Job Corps Director.

Low income individual means an individual who meets the definition in WIA section 101(25).

National Office means the national office of Job Corps.

National training contractor means a labor union, union-affiliated organization, business organization, association or a combination of such organizations, which has a contract with the national office to provide vocational training, placement, or other services.

Operational support services means activities or services required to support the operation of Job Corps, including:

(1) Outreach and admissions services;

(2) Contracted vocational training and off-center training;

(3) Placement services;

(4) Continued services for graduates;

(5) Certain health services; and

(6) Miscellaneous logistical and technical support.

Outreach and admissions agency means an organization that performs outreach, and screens and enrolls youth under a contract or other agreement with Job Corps.

Placement means student employment, entry into the Armed Forces, or enrollment in other training or education programs following separation from Job Corps.

Placement agency means an organization acting under a contract or other agreement with Job Corps to provide placement services for graduates and, the extent possible, for former students.

Regional appeal board means the board designated by the Regional Director to consider student appeals of disciplinary discharges.

Regional Director means the chief Job Corps official of a regional office or a person authorized to act for the Regional Director.

Regional Office means a regional office of Job Corps.

Regional Solicitor means the chief official of a regional office of the DOL Office of the Solicitor, or a person authorized to act for the Regional Solicitor.

Separation means the action by which an individual ceases to be a student in the Job Corps program, either voluntarily or involuntarily.

Student means an individual enrolled in the Job Corps.

Unauthorized goods means:

(1) Firearms and ammunition;

(2) Explosives and incendiaries;

(3) Knives with blades longer than 2 inches;

(4) Homemade weapons;

(5) All other weapons and instruments used primarily to inflict personal injury;

(6) Stolen property;

(7) Drugs, including alcohol, marijuana, depressants, stimulants, hallucinogens, tranquilizers, and drug paraphernalia except for drugs and/or paraphernalia that are prescribed for medical reasons; and

(8) Any other goods prohibited by the center operator in a student handbook.

§ 670.130 What is the role of the Job Corps Director?

The Job Corps Director has been delegated the authority to carry out the responsibilities of the Secretary under Subtitle I–C of the Act. Where the term ''Secretary'' is used in this part 670 to refer to establishment or issuance of guidelines and standards directly relating to the operation of the Job Corps program, the Job Corps Director has that responsibility.

Subpart B—Site Selection and Protection and Maintenance of Facilities

§ 670.200 Who decides where Job Corps centers will be located?

(a) The Secretary must approve the location and size of all Job Corps centers.

(b) The Secretary establishes procedures for making decisions

concerning the establishment, relocation, expansion, or closing of contract centers.

§ 670.210 How are center facility improvements and new construction handled?

The Secretary issues procedures for requesting, approving, and initiating capital improvements and new construction on Job Corps centers.

§ 670.220 Is the Secretary responsible for protection and maintenance of center facilities?

(a) Yes. The Secretary establishes procedures for the protection and maintenance of contract center facilities owned or leased by the Department of Labor, that are consistent with Federal Property Management Regulations at 41 CFR Chapter 101.

(b) Federal agencies operating civilian conservation centers (CCC's) on public land are responsible for protection and maintenance of CCC facilities.

(c) The Secretary issues procedures for conducting periodic facility surveys of centers to determine their condition and to identify needs such as correction of safety and health deficiencies, rehabilitation, and/or new construction.

Subpart C—Funding and Selection of Service Providers

§ 670.300 What entities are eligible to receive funds to operate centers and provide training and operational support services?

(a) Entities eligible to receive funds under this subpart to operate centers include:

(1) Federal, State, and local agencies;

(2) Private for-profit and non-profit corporations;

(3) Indian tribes and organizations; and

(4) Area vocational education or residential vocational schools. (WIA sec. 147(a)(1)(A) and (d)).

(b) Entities eligible to receive funds to provide outreach and admissions, placement and other operational support services include:

(1) One-Stop Centers and partners;

(2) Community action agencies;

(3) Business organizations;

(4) Labor organizations;

(5) Private for-profit and non-profit corporations; and

(6) Other agencies, and individuals that have experience and contact with youth. (WIA sec. 145(a)(3)).

§ 670.310 How are entities selected to receive funding?

(a) The Secretary selects eligible entities to operate contract centers and operational support service providers on a competitive basis in accordance with the Federal Property and Administrative Services Act of 1949 unless sections 303 (c) and (d) of that Act apply. In selecting an entity, Job Corps issues requests for proposals (RFP) for the operation of all contract centers and for provision of operational support services according to Federal Acquisition Regulation (48 CFR chapter 1, *et seq.*) and DOL Acquisition Regulation (48 CFR chapter 29). Job Corps develops RFP's for center operators in consultation with the Governor, the center industry council (if established), and the Local Board for the workforce investment area in which the center is located.

(b) The RFP for each contract center and each operational support service contract describes uniform specifications and standards, as well as specifications and requirements that are unique to the operation of the specific center or to the specific required operational support services.

(c) The contracting officer selects and funds Job Corps contract center operators on the basis of an evaluation of the proposals received using criteria established by the Secretary, and set forth in the RFP. The criteria include the following:

(1) The offeror's ability to coordinate the activities carried out through the Job Corps center with activities carried out under the appropriate State and local workforce investment plans;

(2) The degree to which the offeror is proposing vocational training that reflects employment opportunities in the local areas in which most of the students intend to seek employment;

(3) The degree to which the offeror is familiar with the surrounding community, including the applicable One-Stop Centers, and the State and region in which the center is located; and

(4) The offeror's past performance.

(d) The contracting officer selects and funds operational support service contractors on the basis of an evaluation of the proposals received using criteria established by the Secretary and set forth in the RFP.

(e) The Secretary enters into interagency agreements with Federal agencies for the funding, establishment, and operation of CCCs which will include provisions to ensure that the Federal agencies comply with the regulations under this part.

§ 670.320 What are the requirements for award of contracts and payments to Federal agencies?

(a) The requirements of the Federal Property and Administrative Services Act of 1949, as amended; the Federal Grant and Cooperative Agreement Act of 1977; the Federal Acquisition Regulation (48 CFR chapter 1); and the DOL Acquisition Regulation (48 CFR chapter 29) apply to the award of contracts and to payments to Federal agencies.

(b) Job Corps funding of Federal agencies that operate CCCs are made by a transfer of obligational authority from DOL to the respective operating agency.

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

§ 670.400 Who is eligible to participate in the Job Corps program?

To be eligible to participate in the Job Corps, an individual must be:

(a) At least 16 and not more than 24 years of age at the time of enrollment, except

(1) There is no upper age limit for an otherwise eligible individual with a disability; and

(2) Not more than 20% of individuals enrolled nationwide may be individuals who are aged 22 to 24 years old;

(b) A low-income individual; and

(c) An individual who is facing one or more of the following barriers to education and employment:

(1) Is basic skills deficient, as defined in WIA section 101(4); or

(2) Is a school dropout; or

(3) Is homeless, or a runaway, or a foster child; or

(4) Is a parent; or

(5) Requires additional education, vocational training, or intensive counseling and related assistance in order to participate successfully in regular schoolwork or to secure and hold meaningful employment.

(d) Meets the requirements of § 670.420, if applicable.

§ 670.410 Are there additional factors which are considered in selecting an eligible applicant for enrollment?

Yes. In accordance with procedures issued by the Secretary, an eligible applicant may be selected for enrollment, only if:

(a) A determination is made, based on information relating to the background, needs and interests of the applicant, that the applicant's educational and vocational needs can best be met through the Job Corps program;

(b) A determination is made that there is a reasonable expectation the applicant can participate successfully in group situations and activities, and is not likely to engage in actions that would potentially:

(1) Prevent other students from receiving the benefit of the program;

(2) Be incompatible with the maintenance of sound discipline; or

(3) Impede satisfactory relationships between the center to which the student is assigned and surrounding local communities;

(c) The applicant is made aware of the center's rules and what the consequences are for failure to observe the rules, as described by procedures issued by the Secretary;

(d) The applicant passes a background check conducted according to procedures established by the Secretary. The background check must find that the applicant is not on probation, parole, under a suspended sentence or under the supervision of any agency as a result of court action or institutionalization, unless the court or appropriate agency certifies in writing that it will approve of the applicant's release from its supervision and that the applicant's release does not violate applicable laws and regulations. No one will be denied enrollment in Job Corps solely on the basis of contact with the criminal justice system. (WIA secs. 145(b)(1)(C) and 145(b)(2).)

(e) Suitable arrangements are made for the care of any dependent children for the proposed period of enrollment.

§ 670.420 Are there any special requirements for enrollment related to the Military Selective Service Act?

(a) Yes. Each male applicant 18 years of age or older must present evidence that he has complied with section 3 of the Military Selective Service Act (50 U.S.C. App. 451 *et seq.*) if required; and

(b) When a male student turns 18 years of age, he must submit evidence to the center that he has complied with the requirements of the Military Selective Service Act (50 U.S.C. App. 451 *et seq.*).

§ 670.430 What entities conduct outreach and admissions activities for the Job Corps program?

The Regional Director makes arrangements with outreach and admissions agencies to perform Job Corps recruitment, screening and admissions functions according to standards and procedures issued by the Secretary. One-Stop Centers or partners, community action organizations, private for-profit and non-profit businesses, labor organizations, or other entities that have contact with youth over substantial periods of time and are able to offer reliable information about the needs of youth, conduct outreach and admissions activities. The Regional Director awards contracts for provision of outreach and screening services on a competitive basis in accordance with the requirements in § 670.310 of this part.

§ 670.440 What are the responsibilities of outreach and admissions agencies?

(a) Outreach and admissions agencies are responsible for:

(1) Developing outreach and referral sources;

(2) Actively seeking out potential applicants;

(3) Conducting personal interviews with all applicants to identify their needs and eligibility status; and

(4) Identifying youth who are interested and likely Job Corps participants.

(b) Outreach and admissions agencies are responsible for completing all Job Corps application forms and determining whether applicants meet the eligibility and selection criteria for participation in Job Corps as provided in §§ 670.400 and 670.410 of this subpart.

(c) The Secretary may decide that determinations with regard to one or more of the eligibility criteria will be made by the Regional Director.

§ 670.450 How are applicants who meet eligibility and selection criteria assigned to centers?

(a) Each applicant who meets the application and selection requirements of § 670.400 and § 670.410 is assigned to a center based on an assignment plan developed by the Secretary. The assignment plan identifies a target for the maximum percentage of students at each center who come from the State or region nearest the center, and the regions surrounding the center. The assignment plan is based on an analysis of:

(1) The number of eligible individuals in the State and region where the center is located and the regions surrounding where the center is located;

(2) The demand for enrollment in Job Corps in the State and region where the center is located and in surrounding regions; and

(3) The size and enrollment level of the center.

(b) Eligible applicants are assigned to centers closest to their homes, unless it is determined, based on the special needs of applicants, including vocational interests and English literacy needs, the unavailability of openings in the closest center, or parent or guardian concerns, that another center is more appropriate.

(c) A student who is under the age of 18 must not be assigned to a center other than the center closest to home if a parent or guardian objects to the assignment.

§ 670.460 What restrictions are there on the assignment of eligible applicants for nonresidential enrollment in Job Corps?

(a) No more than 20 percent of students enrolled in Job Corps nationwide may be nonresidential students.

(b) In enrolling individuals who are to be nonresidential students, priority is given to those eligible individuals who are single parents with dependent children. (WIA sec 147(b)).

§ 670.470 May a person who is determined to be ineligible or an individual who is denied enrollment appeal that decision?

(a) A person who is determined to be ineligible to participate in Job Corps under § 670.400 or a person who is not selected for enrollment under § 670.410 may appeal the determination to the outreach and admissions agency or to the center, within 60 days of the determination. The appeal will be resolved according to the procedures in §§ 670.990 and 670.991 of this part. If the appeal is denied by the outreach/admissions contractor or the center, the person may appeal the decision in writing to the Regional Director within 60 days the date of the denial. The Regional Director will decide within 60 days whether to reverse or approve the appealed decision. The decision by the Regional Director is the Department's final decision.

(b) If an applicant believes that he or she has been determined ineligible or not selected for enrollment based upon a factor prohibited by WIA sec. 188, the individual may proceed under the applicable DOL nondiscrimination regulations implementing WIA sec. 188.

(c) An applicant who is determined to be ineligible or a person who is denied enrollment must be referred to the appropriate One-Stop Center or other local service provider.

§ 670.480 At what point is an applicant considered to be enrolled in Job Corps?

(a) To become enrolled as a Job Corps student, an applicant selected for enrollment must physically arrive at the assigned Job Corps center on the appointed date. However, applicants selected for enrollment who arrive at their assigned centers by government furnished transportation are considered to be enrolled on their dates of departure by such transportation.

(b) Center operators must document the enrollment of new students according to procedures issued by the Secretary.

§ 670.490 How long can a student be enrolled in Job Corps?

(a) Except as provided in paragraph (b) of this section, a student may remain

enrolled in Job Corps for no more than two years.

(b)(1) An extension of a student's enrollment may be authorized in special cases according to procedures issued by the Secretary; and

(2) A student's enrollment in an advanced career training program may be extended in order to complete the program for a period not to exceed one year.

Subpart E—Program Activities and Center Operations

§ 670.500 What services must Job Corps centers provide?

(a) Job Corps centers must provide:

(1) Academic, vocational, employability and social skills training;

(2) Work-based learning; and

(3) Recreation, counseling and other residential support services.

(b) In addition, centers must provide students with access to the core services described in WIA section 134(d)(2) and the intensive services described in WIA section 134(d)(3).

§ 670.505 What types of training must Job Corps centers provide?

(a) Job Corps centers must provide basic education, vocational and social skills training. The Secretary provides curriculum standards and guidelines.

(b) Each center must provide students with competency-based or individualized training in an occupational area that will best contribute to the students' opportunities for permanent long-term employment.

(1) Specific vocational training programs offered by individual centers must be approved by the Regional Director according to policies issued by the Secretary.

(2) Center industry councils described in § 670.800 of this part, must review appropriate labor market information, identify employment opportunities in local areas where students will look for employment, determine the skills and education necessary for those jobs, and as appropriate, recommend changes in the center's vocational training program to the Secretary.

(c) Each center must implement a system to evaluate and track the progress and achievements of each student at regular intervals.

(d) Each center must develop a training plan that must be available for review and approval by the appropriate Regional Director.

§ 670.510 Are Job Corps center operators responsible for providing all vocational training?

No. In order to facilitate students' entry into the workforce, the Secretary may contract with national business, union, or union-affiliated organizations for vocational training programs at specific centers. Contractors providing such vocational training will be selected in accordance with the requirements § 670.310 of this part.

§ 670.515 What responsibilities does the center operators have in managing work-based learning?

(a) The center operator must emphasize and implement work-based learning programs for students through center program activities, including vocational skills training, and through arrangements with employers. Work-based learning must be under actual working conditions and must be designed to enhance the employability, responsibility, and confidence of the students. Work-based learning usually occurs in tandem with students' vocational training.

(b) The center operator must ensure that students are assigned only to workplaces that meet the safety standards described in § 670.935 of this part.

§ 670.520 Are students permitted to hold jobs other than work-based learning opportunities?

Yes. A center operator may authorize a student to participate in gainful leisure time employment, as long as the employment does not interfere with required scheduled activities.

§ 670.525 What residential support services must Job Corps center operators provide?

Job Corps center operators must provide the following services according to procedures issued by the Secretary:

(a) A quality living and learning environment that supports the overall training program and includes a safe, secure, clean and attractive physical and social environment, seven days a week, 24 hours a day;

(b) An ongoing, structured counseling program for students;

(c) Food service, which includes provision of nutritious meals for students;

(d) Medical services, through provision or coordination of a wellness program which includes access to basic medical, dental and mental health services, as described in the Policy and Requirements Handbook, for all students from the date of enrollment until separation from the Job Corps program;

(e) A recreation/avocational program;

(f) A student leadership program and an elected student government; and

(g) A student welfare association for the benefit of all students that is funded by non-appropriated funds which come from sources such as snack bars, vending machines, disciplinary fines, and donations, and is run by an elected student government, with the help of a staff advisor.

§ 670.530 Are Job Corps centers required to maintain a student accountability system?

Yes. Each Job Corps center must establish and operate an effective system to account for and document the whereabouts, participation, and status of students during their Job Corps enrollment. The system must enable center staff to detect and respond to instances of unauthorized or unexplained student absence. Each center must operate its student accountability system according to requirements and procedures issued by the Secretary.

§ 670.535 Are Job Corps centers required to establish behavior management systems?

(a) Yes. Each Job Corps center must establish and maintain its own student incentives system to encourage and reward students' accomplishments.

(b) The Job Corps center must establish and maintain a behavior management system, according to procedures established by the Secretary. The behavior management system must include a zero tolerance policy for violence and drugs policy as described in § 670.540.

§ 670.540 What is Job Corps' zero tolerance policy?

(a) Each Job Corps center must have a zero tolerance policy for:

(1) An act of violence as defined in procedures issued by the Secretary;

(2) Use, sale, or possession of a controlled substance, as defined at 21 U.S.C. 802;

(3) Abuse of alcohol;

(4) Possession of unauthorized goods; or

(5) Other illegal or disruptive activity.

(b) As part of this policy, all students must be tested for drugs as a condition of enrollment. (WIA sec. 145(a)(1) and 152(b)(2).)

(c) According to procedures issued by the Secretary, the policy must specify the offenses that result in the automatic separation of a student from the Job Corps. The center director is responsible for determining when there is a violation of a specified offense.

§ 670.545 How does Job Corps ensure that students receive due process in disciplinary actions?

The center operator must ensure that all students receive due process in

disciplinary proceedings according to procedures developed by the Secretary. These procedures must include, at a minimum, center fact-finding and behavior review boards, the penalty of separation from Job Corps might be imposed, and procedures for students to appeal a center's decision to discharge them involuntarily from Job Corps to a regional appeal board.

§ 670.550 What responsibilities do Job Corps centers have in assisting students with child care needs?

(a) Job Corps centers are responsible for coordinating with outreach and admissions agencies to assist students with making arrangements for child care for their dependent children.

(b) Job Corps centers may operate on center child development programs with the approval of the Secretary.

§ 670.555 What are the center's responsibilities in ensuring that students' religious rights are respected?

(a) Centers must ensure that a student has the right to worship or not worship as he or she chooses.

(b) Religious services may not be held on-center unless the center is so isolated that transportation to and from community religious facilities is impractical.

(c) If religious services are held on-center, no Federal funds may be paid to those who conduct services. Services may not be confined to one religious denomination, and centers may not require students to attend services.

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

(a) Yes. The Secretary may undertake experimental, research and demonstration projects related to the Job Corps program according to WIA section 156.

(b) The Secretary establishes policies and procedures for conducting such projects.

(c) All studies and evaluations produced or developed with Federal funds become the property of the United States.

Subpart F—Student Support

§ 670.600 Is government-paid transportation provided to Job Corps students?

Yes. Job Corps provides for the transportation of students between their homes and centers as described in policies and procedures issued by the Secretary.

§ 670.610 When are students authorized to take leaves of absence from their Job Corps centers?

Job Corps students are eligible for annual leaves, emergency leaves and other types of leaves of absence from their assigned centers according to criteria and requirements that are issued by the Secretary. Center operators and other service providers must account for student leave according to procedures issued by the Secretary.

§ 670.620 Are Job Corps students eligible to receive cash allowances and performance bonuses?

(a) Yes. According to criteria and rates that are established by the Secretary, Job Corps students receive cash living allowances, performance bonuses, and allotments for care of dependents, and graduates receive post-separation readjustment allowances and placement bonuses. The Secretary may provide former students with post-separation allowances.

(b) In the event of a student's death, any amount due under this section are paid according to provisions of 5 U.S.C. 5582 relating to issues such as designation of beneficiary; order of precedence and related matters.

§ 670.630 Are student allowances subject to Federal Payroll Taxes?

Yes. Job Corps student allowances are subject to Federal payroll tax withholding and social security taxes. Job Corps students are considered to be Federal employees for purposes of Federal payroll taxes. (WIA sec. 157(a)(2).)

§ 670.640 Are students provided with clothing?

Yes. Job Corps students are provided cash clothing allowances and/or articles of clothing, including safety clothing, when needed for their participation in Job Corps and their successful entry into the work force. Center operators and other service providers must issue clothing and clothing assistance to students according to rates, criteria, and procedures that are issued by the Secretary.

Subpart G—Placement and Continued Services

§ 670.700 What are Job Corps centers' responsibilities in preparing students for placement services?

Job Corps centers must test and counsel students to assess their competencies and capabilities and determine their readiness for placement.

§ 670.710 What placement services will be provided for Job Corps students?

(a) Job Corps placement services focus on placing program graduates in:

(1) Full-time jobs that are related to their vocational training and that pay wages that allow for self-sufficiency;

(2) Higher education; or

(3) Advanced training programs, including apprenticeship programs.

(b) Placement service levels for students may vary, depending on whether the student is a graduate or a former student.

(c) Procedures relating to placement service levels are issued by the Secretary.

§ 670.720 Who will provide placement services?

The One-Stop system must be used to the fullest extent possible in placing graduates and former students in jobs. Job Corps placement agencies provide placement services under a contract or other agreement with the Department of Labor.

§ 670.730 What are the responsibilities of placement agencies?

(a) Placement agencies are responsible for:

(1) Contacting graduates;

(2) Assisting them in improving skills in resume preparation, interviewing techniques and job search strategies;

(3) Identifying job leads or educational and training opportunities through coordination with local Workforce Investment Boards, One-Stop operators and partners, employers, unions and industry organizations; and

(4) Placing graduates in jobs, apprenticeship, the Armed Forces, or higher education or training, or referring former students for additional services in their local communities as appropriate. Placement services may be provided for former students according to procedures issued by the Secretary.

(b) Placement agencies must record and submit all Job Corps placement information according to procedures established by the Secretary.

§ 670.740 Must continued services be provided for graduates?

Yes. According to procedures issued by the Secretary, continued services, including transition support and workplace counseling, must be provided to program graduates for 12 months after graduation.

§ 670.750 Who may provide continued services for graduates?

Placement agencies, centers or other agencies, including One-Stop partners, may provide post-program services under a contract or other agreement

with the Regional Director. In selecting a provider for continued services, priority is given to One-Stop partners. (WIA sec. 148(d)).

§ 670.760 How will Job Corps coordinate with other agencies?

(a) The Secretary issues guidelines for the National Office, Regional Offices, Job Corps centers and operational support providers to use in developing and maintaining cooperative relationships with other agencies and institutions, including law enforcement, educational institutions, communities, and other employment and training programs and agencies.

(b) The Secretary develops polices and requirements to ensure linkages with the One-Stop delivery system to the greatest extent practicable, as well as with other Federal, State, and local programs, and youth programs funded under this title. These linkages enhance services to youth who face multiple barriers to employment and must include, where appropriate:

(1) Referrals of applicants and students;

(2) Participant assessment;

(3) Pre-employment and work maturity skills training;

(4) Work-based learning;

(5) Job search, occupational, and basic skills training; and

(6) Provision of continued services for graduates.

Subpart H—Community Connections

§ 670.800 How do Job Corps centers and service providers become involved in their local communities?

(a) Job Corps representatives serve on Youth Councils operating under applicable Local Boards wherever geographically feasible.

(b) Each Job Corps center must have a Business and Community Liaison designated by the director of the center to establish relationships with local and distant employers, applicable One-Stop centers and local boards, and members of the community according to procedures established by the Secretary. (WIA sec. 153(a).)

(c) Each Job Corps center must implement an active community relations program.

(d) Each Job Corps center must establish an industry advisory council, according to procedures established by the Secretary. The industry advisory council must include:

(1) Distant and local employers;

(2) Representatives of labor organizations (where present) and employees; and

(3) Job Corps students and graduates.

(e) A majority of the council members must be local and distant business owners, chief executives or chief operating officers of nongovernmental employers or other private sector employers, who have substantial management, hiring or policy responsibility and who represent businesses with employment opportunities in the local area and the areas to which students will return.

(f) The council must work with Local Boards and must review labor market information to provide recommendations to the Secretary regarding the center's vocational training offerings, including identification of emerging occupations suitable for training. (WIA sec.154(b)(1).)

(g) Job Corps is identified as a required One-Stop partner. Wherever practicable, Job Corps centers and operational support contractors must establish cooperative relationships and partnerships with One-Stop centers and other One-Stop partners, Local Boards, and other programs for youth.

Subpart I—Administrative and Management Provisions

§ 670.900 Are damages caused by students eligible for reimbursement under the Tort Claims Act?

Yes. Students are considered Federal employees for purposes of the Tort Claims Act (28 U.S.C. 2671 (*et seq.*). If a student is alleged to be involved in the damage, loss, or destruction of the property of others, or in causing personal injury to or the death of another individual(s), the injured person(s), or their agent may file a claim with the Center Director. Director must investigate all of the facts, including accident and medical reports, and interview witnesses, and submit the claim for a decision to the Regional Solicitor's Office. All tort claims for $25,000 or more must be sent to the Associate Solicitor for Employee Benefits, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210.

§ 670.905 Are damages that occur to private parties at Job Corps Centers eligible for reimbursement under the Tort Claims Act?

(a) Whenever there is loss or damage to persons or property, which is believed to have resulted from operation of a Job Corps center and to be a proper charge against the Federal Government, the owner(s) of the property, the injured person(s), or their agent may submit a claim for the damage to the Regional Solicitor. Claims must be filed no later than two years from the date of loss or damage. The Regional Solicitor will determine if the claim is valid under the Tort Claims Act. If the Regional Solicitor determines a claim is not valid under the Tort Claims Act, the Regional Solicitor must consider the facts and may still settle the claim, in an amount not to exceed $1,500.

(b) The Job Corps may pay students for valid claims under the Tort Claims Act for lost, damaged, or stolen property, up to a maximum amount set by the Secretary, when the loss is not due to the negligence of the student. Students must file claims no later than six months from the date of loss. Students are compensated for losses including those that result from a natural disaster or those that occur when the student's property is in the protective custody of the Job Corps, such as when the student is AWOL. Claims must be filed with Job Corps regional offices. The regional office will promptly notify the student and the center of its determination.

§ 670.910 Are students entitled to Federal Employees Compensation Benefits?

(a) Job Corps students are considered Federal employees for purposes of the Federal Employees Compensation Act (FECA). (WIA sec. 157(a)(3).)

(b) Job Corps students may be entitled to Federal Employees Compensation Benefits as specified in (WIA sec. 157.)

(c) Job Corps students must meet the same eligibility tests for FECA payments that apply to all other Federal employees. One of those tests is that the injury must occur ''in the performance of duty.'' This test is described in § 670.915.

§ 670.915 When are residential students considered to be in the performance of duty?

Residential students will be considered to be in the ''performance of duty'' at all times while:

(a) They are on center under the supervision and control of Job Corps officials;

(b) They are engaged in any authorized Job Corps activity;

(c) They are in authorized travel status; or

(d) They are engaged in any authorized offsite activity.

§ 670.920 When are non-resident students considered to be in the performance of duty?

Non-resident students are considered ''in performance of duty'' as Federal employees when they are engaged in any authorized Job Corps activity, from the time they arrive at any scheduled center activity until they leave the activity. The standard rules governing

coverage of Federal employees during travel to and from work apply. These rules are described in guidance issued by the Secretary.

§ 670.925 When are students considered to be not in the performance of duty?

Students are considered to be not in the performance of duty when:

(a) They are AWOL;

(b) They are at home, whether on pass or on leave;

(c) They are engaged in an unauthorized offsite activity; or

(d) They are injured or ill due to their own:

(1) Willful misconduct;

(2) Intent to cause injury or death to oneself or another; or

(3) By intoxication or drugs.

§ 670.930 How are FECA benefits computed?

(a) FECA benefits for disability or death are computed using the entrance salary for a grade GS–2 as the student's monthly pay.

(b) The provisions of 5 U.S.C. 8113 (a) and (b), relating to compensation for work injuries apply to students. Compensation for disability will not begin to accrue until the day following the date on which the injured student completes his or her Job Corps separation.

(c) Whenever a student is injured, develops an occupationally related illness, or dies while in the performance of duty, the procedures in the DOL Employment Standards Administration regulations, at 20 CFR ch. I, must be followed. A thorough investigation of the circumstances and a medical evaluation must be completed and required forms must be timely filed by the center operator with the DOL Office of Workers' Compensation Programs.

§ 670.935 How will students be protected from unsafe or unhealthy situations?

(a) The Secretary establishes procedures to ensure that students are not required or permitted to work, be trained, reside in, or receive services in buildings or surroundings or under conditions that are unsanitary or hazardous. Whenever students are employed or in training for jobs, they must be assigned only to jobs or training which observe applicable Federal, State and local health and safety standards.

(b) The Secretary develops procedures to ensure compliance with applicable DOL Occupational Safety and Health Administration regulations.

§ 670.940 What are the requirements relating to criminal law enforcement jurisdiction on center property?

(a) All Job Corps property which would otherwise be under exclusive Federal legislative jurisdiction is considered under concurrent jurisdiction with the appropriate State and locality with respect to criminal law enforcement. Concurrent jurisdiction extends to all portions of the property, including housing and recreational facilities, in addition to the portions of the property used for education and training activities.

(b) Centers located on property under concurrent Federal-State jurisdiction must establish agreements with Federal, State and local law enforcement agencies to enforce criminal laws.

(c) The Secretary develops procedures to ensure that any searches of a student's person, personal area or belongings for unauthorized goods follow applicable right-to-privacy laws.

§ 670.945 Are Job Corps operators and service providers authorized to pay State or local taxes on gross receipts?

(a) A private for-profit or a nonprofit Job Corps service provider is not liable, directly or indirectly, to any State or subdivision for any gross receipts taxes, business privilege taxes measured by gross receipts, or any similar taxes in connection with any payments made to or by such service provider for operating a center or other Job Corps program or activity. The service provider is not liable to any State or subdivision to collect or pay any sales, excise, use, or similar tax imposed upon the sale to or use by such deliverer of any property, service, or other item in connection with the operation of a center or other Job Corps program or activity. (WIA sec. 158(d).)

(b) If a State or local authority compels a center operator or other service provider to pay such taxes, the center operator or service provider may pay the taxes with Federal funds, but must document and report the State or local requirement according to procedures issued by the Secretary.

§ 670.950 What are the financial management responsibilities of Job Corps center operators and other service providers?

(a) Center operators and other service providers must manage Job Corps funds using financial management information systems that meet the specifications and requirements of the Secretary.

(b) These financial management information systems must:

(1) Provide accurate, complete, and current disclosures of the costs of their Job Corps activities;

(2) Ensure that expenditures of funds are necessary, reasonable, allocable and allowable in accordance with applicable cost principles;

(3) Use account structures specified by the Secretary;

(4) Ensure the ability to comply with cost reporting requirements and procedures issued by the Secretary; and

(5) Maintain sufficient cost data for effective planning, monitoring, and evaluation of program activities and for determining the allowability of reported costs.

§ 670.955 Are Center Operators and Service Providers Subject to Federal Audits?

(a) Yes. Center operators and service providers are subject to Federal audits.

(b) The Secretary arranges for the survey, audit, or evaluation of each Job Corps center and service provider at least once every three years, by Federal auditors or independent public accountants. The Secretary may arrange for more frequent audits. (WIA sec. 159(b)(2).)

(c) Center operators and other service providers are responsible for giving full cooperation and access to books, documents, papers and records to duly appointed Federal auditors and evaluators. (WIA sec. 159(b)(1).)

§ 670.960 What are the procedures for management of student records?

The Secretary issues guidelines for a system of maintaining records for each student during enrollment and for disposition of such records after separation.

§ 670.965 What procedures apply to disclosure of information about Job Corps students and program activities?

(a) The Secretary develops procedures to respond to requests for information or records or other necessary disclosures pertaining to students.

(b) DOL disclosure of Job Corps information must be handled according to the Freedom of Information Act and according to DOL regulations at 29 CFR part 70.

(c) Job Corps contractors are not ''agencies'' for Freedom of Information Act purposes. Therefore, their records are not subject to disclosure under the Freedom of Information Act or 29 CFR part 70.

(d) The regulations at 29 CFR Part 70a apply to a system of records covered by the Privacy Act of 1974 maintained by DOL or to a similar system maintained by a contractor, such as a screening agency, contract center operator, or placement agency on behalf of the Job Corps.

§ 670.970 What are the reporting requirements for center operators and operational support service providers?

The Secretary establishes procedures to ensure the timely and complete

reporting of necessary financial and program information to maintain accountability. Center operators and operational support service providers are responsible for the accuracy and integrity of all reports and data they provide.

§ 670.975 How will performance of the Job Corps program be assessed?

The performance of the Job Corps program as a whole, and the performance of individual program components, is assessed on an ongoing basis, in accordance with these regulations and procedures and standards, including a national performance measurement system, issued by the Secretary. Annual performance assessments are done for each center operator and other service providers, including screening and admissions and placement agencies.

§ 670.980 What are the indicators of performance for Job Corps?

(a) At a minimum, the performance assessment system established under § 670.975 of this subpart will include expected levels of performance established for each of the indicators of performance contained in WIA section 159(c). These are:

(1) The number of graduates and rate of graduation, analyzed by the type of vocational training received and the training provider;

(2) The job placement rate of graduates into unsubsidized employment, analyzed by the vocational training received, whether or not the job placement is related to the training received, the vocational training provider, and whether the placement is made by a local or national service provider;

(3) The average placement wage of graduates in training-related and non-training related unsubsidized jobs;

(4) The average wage of graduates on the first day of employment and at 6 and 12 months following placement, analyzed by the type of vocational training received;

(5) The number of and retention rate of graduates in unsubsidized employment after 6 and 12 months ;

(6) The number of graduates who entered unsubsidized employment for 32 hours per week or more, for 20 to 32 hours per week, and for less than 20 hours per week.

(7) The number of graduates placed in higher education or advanced training; and

(8) The number of graduates who attained job readiness and employment skills.

(b) The Secretary issues the expected levels of performance for each indicator. To the extent practicable, the levels of performance will be continuous and consistent from year to year.

§ 670.985 What happens if a center operator, screening and admissions contractor or other service provider fails to meet the expected levels of performance?

(a) The Secretary takes appropriate action to address performance issues through a specific performance plan.

(b)The plan may include the following actions:

(1) Providing technical assistance to a Job Corps center operator or support service provider, including a screening and admissions contractor;

(2) Changing the management staff of a center;

(3) Changing the vocational training offered at a center;

(4) Contracting out or recompeting the contract for a center or operational support service provider;

(5) Reducing the capacity of a Job Corps center;

(6) Relocating a Job Corps center; or

(7) Closing a Job Corps center. (WIA sec. 159(f).)

§ 670.990 What procedures are available to resolve complaints and disputes?

(a) Each Job Corps center operator and service provider must establish and maintain a grievance procedure for filing complaints and resolving disputes from applicants, students and/or other interested parties about its programs and activities. A hearing on each complaint or dispute must be conducted within 30 days of the filing of the complaint or dispute. A decision on the complaint must be made by the center operator or service provider, as appropriate, within 60 days after the filing of the complaint, and a copy of the decision must be immediately served, by first-class mail, on the complainant and any other party to the complaint. Except for complaints under § 670.470 of this part or complaints alleging fraud or other criminal activity, complaints may be filed within one year of the occurrence that led to the complaint.

(b) The procedure established under paragraph (a) of this section must include procedures to process complaints alleging violations of WIA section 188, consistent with DOL nondiscrimination regulations implementing WIA section 188 and § 670.995 of this subpart.

§ 670.991 How does Job Corps ensure that complaints or disputes are resolved in a timely fashion?

(a) If a complaint is not resolved by the center operator or service provider in the time frames described in § 670.990 of this subpart, the person making the complaint may request that the Regional Director determine whether reasonable cause exists to believe that the Act or regulations for this part of the Act have been violated. The request must be filed with the Regional Director within 60 days from the date that the center operator or service provider should have issued the decision.

(b) Following the receipt of a request for review under paragraph (a) of this section, the Regional Director must determine within 60 days whether there has been a violation of the Act or these regulations. If the Regional Director determines that there has been a violation of the Act or Regulations, (s)he may direct the operator or service provider to remedy the violation or direct the service provider to issue a decision to resolve the dispute according to the service provider's grievance procedures. If the service provider does not comply with the Regional Director's decision within 30 days, the Regional Director may impose a sanction on the center operator or service provider for violating the Act or regulations, and/or for failing to issue a decision. Decisions imposing sanctions upon a center operator or service provider may be appealed to the DOL Office of Administrative Law Judges under 20 CFR 667.800 or 667.840.

§ 670.992 How does Job Corps ensure that centers or other service providers comply with the Act and regulations?

(a) If DOL receives a complaint or has reason to believe that a center or other service provider is failing to comply with the requirements of the Act or regulations, the Regional Director must investigate the allegation and determine within 90 days after receiving the complaint or otherwise learning of the alleged violation, whether such allegation or complaint is true.

(b) As a result of such a determination, the Regional Director may:

(1) Direct the center operator or service provider to handle a complaint through the grievance procedures established under § 670.990 of this subpart; or

(2) Investigate and determine whether the center operator or service provider is in compliance with the Act and regulations. If the Regional Director determines that the center or service provider is not in compliance with the Act or regulations, the Regional Director may take action to resolve the complaint under § 670.991(b) of this subpart, or will report the incident to the DOL

Office of the Inspector General, as described in 20 CFR 667.630.

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

A dispute between DOL and a Job Corps contractor will be handled according to the Contract Disputes Act and applicable regulations.

§ 670.994 How does Job Corps resolve disputes between DOL and other Federal Agencies?

Disputes between DOL and a Federal Agency operating a center will he handled according to the interagency agreement with the agency which is operating the center.

§ 670.995 What DOL equal opportunity and nondiscrimination regulations apply to Job Corps?

Nondiscrimination requirements, procedures, complaint processing, and compliance reviews are governed by, as applicable, provisions of the following Department of Labor regulations:

(a) Regulations implementing WIA section 188 for programs receiving Federal financial assistance under WIA.

(b) 29 CFR part 33 for programs conducted by the Department of Labor; and

(c) 41 CFR chapter 60 for entities that have a Federal government contract.

PART 671—NATIONAL EMERGENCY GRANTS FOR DISLOCATED WORKERS

Sec.

Authority: Sec. 506(c), Pub. L. 105–220; 20 U.S.C. 9276(c).

§ 671.100 What is the purpose of national emergency grants under WIA section 173?

The purpose of national emergency grants is to provide supplemental dislocated worker funds to States, Local Boards and other eligible entities in order to respond to the needs of dislocated workers and communities affected by major economic dislocations and other worker dislocation events which cannot be met with formula allotments.

§ 671.105 What funds are available for national emergency grants?

The Secretary uses funds reserved under WIA section 132(a)(2)(A) to provide financial assistance to eligible applicant for grants under WIA section 173.

§ 671.110 What are major economic dislocations or other events which may qualify for a national emergency grant?

These include:

(a) Plant closures;

(b) Mass layoffs affecting 50 or more workers at a single site of employment;

(c) Closures and realignments of military installations;

(d) Multiple layoffs in a single local community that have significantly increased the total number of unemployed individuals in a community;

(e) Emergencies or natural disasters, as defined in paragraphs (1) and (2) respectively, of section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(1) and (2)) which have been declared eligible for public assistance by the Federal Emergency Management Agency (FEMA); and

(f) Other events, as determined by the Secretary.

§ 671.120 Who is eligible to apply for national emergency grants?

(a) *For projects within a State.* A State, a Local Board or another entity determined to be appropriate by the Governor of the State in which the project will be located may apply for a national emergency grant. Also, Indian tribes, tribal organizations, Alaska Native entities, Indian-controlled organizations serving Indians, or Native Hawaiian organizations which are recipients of funds under section 166 of the Act (Indian and Native American Programs) may apply for a national emergency grant.

(b) *For inter-State projects.* Consortia of States and/or Local Boards may apply. Other private entities which can demonstrate, in the application for assistance, that they possess unique capabilities to effectively respond to the circumstances of the major economic dislocation(s) covered in the application may apply.

(c) *Other entities.* The Secretary may consider applications from other entities, to ensure that appropriate assistance is provided in response to major economic dislocations.

§ 671.125 What are the requirements for submitting applications for national emergency grants?

The Department publishes instructions for submitting applications for National Emergency Grants in the **Federal Register**. The instructions specify application procedures, selection criteria and the approval process.

§ 671.130 When should applications for national emergency grants be submitted to the Department?

(a) Applications for national emergency grants to respond to mass layoffs and plant closures may be submitted to the Department as soon as:

(1) The State receives a notification of a mass layoff or a closure as a result of a WARN notice, a general announcement or some other means determined by the Governor to be sufficient to respond;

(2) Rapid response assistance has been initiated; and

(3) A determination has been made, in collaboration with the applicable Local Board(s) and chief elected official(s), that State and local formula dislocated worker funds are inadequate to provide the level of services needed by the workers being laid off.

(b) An eligible entity may apply for a national emergency grant at any time during the year.

(c) Applications for national emergency grants to respond to a declared emergency or natural disaster as described in § 671.110(e) of this subpart, cannot be considered until FEMA has declared that the affected area is eligible for disaster-related public assistance.

§ 671.140 What are the allowable activities and what dislocated workers may be served under national emergency grants?

(a) National emergency grants may provide adjustment assistance for eligible dislocated workers, described at WIA section 173(c)(2) or (d)(2).

(b) Adjustment assistance includes the core, intensive, and training services authorized at WIA sections 134(d) and 173. The scope of services to be provided in a particular project are negotiated between the Department and the grantee, taking into account the needs of the target population covered by the grant. The scope of services may

be changed through grant modifications, if necessary.

(c) National emergency grants may provide for supportive services to help workers who require such assistance to participate in activities provided for in the grant. Needs-related payments, in support of other employment and training assistance, may be available for the purpose of enabling dislocated workers who are eligible for such payments to participate in programs of training services. Generally, the terms of a grant must be consistent with Local Board policies regarding such financial assistance with formula funds (including the payment levels and duration of payments). However, the terms of the grant agreement may diverge from established Local Board policies, for example:

(1) If unemployed dislocated workers served by the project are not able to meet the 13 or 8 weeks enrollment in training requirement at WIA section 134(e)(3)(B) because of the lack of formula or emergency grant funds in the State or local area at the time of dislocation, such individuals may be eligible for needs-related payments if they are enrolled in training by the end of the 6th week following the date of the emergency grant award; and

(2) Trade-impacted workers who are not eligible for trade readjustment assistance under NAFTA–TAA may be eligible for needs-related payments under a national emergency grant if the worker is enrolled in training by the end of the 16th week following layoff.

(d) A national emergency grant to respond to a declared emergency or natural disaster, as defined at § 671.110(e) of this subpart, may provide short-term disaster relief employment for:

(1) Individuals who are temporarily or permanently laid off as a consequence of the disaster;

(2) Dislocated workers; and

(3) Long-term unemployed individuals.

(e) Temporary employment assistance is authorized on disaster projects that provide food, clothing, shelter and other humanitarian assistance for disaster victims; and on projects that perform demolition, cleaning, repair, renovation and reconstruction of damaged and destroyed structures, facilities and lands located within the disaster area. For such temporary jobs, each eligible worker is limited to no more than six months of employment for each single disaster. The amounts, duration and other limitations on wages will be negotiated for each grant.

(f) Additional requirements that apply to national emergency grants, including natural disaster grants, are contained in the application instructions.

§ 671.150 How do statutory and workflex waivers apply to national emergency grants?

(a) Application of existing general statutory or regulatory waivers and workflex waivers to National Emergency Grants may be requested by State and Local Board grantees, and approved by the Department for a National Emergency Grant award. The application for grant funds must describe any statutory waivers which the applicant wishes to apply to the project that the State and Local Board, as applicable, have been granted under its waiver plan, or that the State has approved for implementation in the applicable local area under workflex waivers. The Department considers such requests as part of the overall application review and decision process.

(b) If, during the operation of the project, the grantee wishes to apply a waiver not identified in the application, the grantee must request a modification which includes the provision to be waived, the operational barrier to be removed and the effect upon the outcome of the project.

§ 671.160 What rapid response activities are required before a national emergency grant application is submitted?

(a) Rapid response is a required Statewide activity under WIA section 134(a)(2)(A), to be carried out by the State or its designee in collaboration with the Local Board(s) and chief elected official(s). Pursuant to 20 CFR 665.310, rapid response encompasses, among other activities, an assessment of the general needs of the affected workers and the resources available to them.

(b) In accordance with national emergency grant application guidelines published by the Department, each applicant must demonstrate that:

(1) The rapid response activities described in 20 CFR 665.310 have been initiated and carried out, or are in the process of being carried out;

(2) State and local funds, including those made available under section 132(b)(2)(B) of the Act, have been used to initiate appropriate services to the eligible workers;

(3) There is a need for additional funds to effectively respond to the assistance needs of the workers and, in the case of declared emergencies and natural disasters, the community; and

(4) The application has been developed by or in conjunction with the Local Board(s) and chief elected official(s) of the local area(s) in which the proposed project is to operate.

§ 671.170 What are the program and administrative requirements that apply to national emergency grants?

(a) In general, the program requirements and administrative standards set forth at 20 CFR parts 663 and 667 will apply.

(b) Exceptions include:

(1) Funds provided in response to a natural disaster may be used for temporary job creation in areas declared eligible for public assistance by FEMA, subject to the limitations of WIA section 173(d), this subpart and the application guidelines issued by the Department;

(2) National emergency grant funds may be used to pay an appropriate level of administrative costs based on the design and complexity of the project. Administration costs are negotiated between the applicant and the Department as part of the application review and grant award and modification processes;

(3) The period of availability for expenditure of funds under a national emergency grant is specified in the grant agreement.

(4) The Secretary may establish supplemental reporting, monitoring and oversight requirements for national emergency grants. The requirements will be identified in the grant application instructions or the grant document.

(5) The Secretary may negotiate and fund projects under terms other than those specified in this subpart where it can be clearly demonstrated that such adjustments will achieve a greater positive benefit for the workers and/or communities being assisted.

PART 652—ESTABLISHMENT AND FUNCTIONING OF STATE EMPLOYMENT SERVICES

1. The authority citation for part 652 continues to read as follows:

Authority: 29 U.S.C. 49k.

2. Section 652.1 is amended by revising paragraph (a), and in paragraph (b), by adding the definition of *State Workforce Investment Board (State Board)* and the definition of *WIA*, by revising the definition of *State agency*, and by removing the definition of *Director*, to read as follows:

§ 652.1 Introduction and definitions.

(a) These regulations implement the provisions of the Wagner-Peyser Act, known hereafter as the Act, as amended by the Workforce Investment Act of 1998 (WIA). Congress intended that the States exercise broad authority in implementing provisions of the Act.

(b) * * *

State Agency means the State governmental unit designated under section 4 of the Act to cooperate with the Secretary in the operation of the public employment service system.

State Workforce Investment Board (State Board) means the entity within a State appointed by the Governor under section 111 of the Workforce Investment Act.

WIA means the Workforce Investment Act of 1998 (29 U.S.C. 2801 *et seq.*).

3. Section 652.3 is amended by revising paragraph (d) to read as follows:

§ 652.3 Basic labor exchange system.

* * * * *

(d) To participate in a system for clearing labor between the States, including the use of standardized classification systems issued by the Secretary, under section 15 of the Act; and.

* * * * *

4. Section 652.5 is revised to read as follows:

§ 652.5 Services authorized.

The sums allotted to each State pursuant to section 6 of the Act shall be expended consistent with an approved plan under 20 CFR 660.100–660.104 and §§ 652.222–214 of this part. At a minimum, each State shall provide the basic labor exchange elements at § 652.3 of this part.

§§ 652.6 and 652.7 [Removed and reserved]

5. Sections 652.6 and 652.7 are removed and reserved.

§ 652.8 [Amended]

6. Section 652.8 is amended in paragraph (j)(1) by removing the phrase ''29 CFR part 31.'' and adding ''the applicable DOL nondiscrimination regulations.'' and in paragraph (j)(5) by removing the phrase ''the provisions of 29 CFR parts 31 and 32.'' and adding ''the applicable DOL nondiscrimination regulations.''

7. Subpart C is added to read as follows:

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

Sec.

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

§ 652.200 What is the purpose of this subpart?

(a) This subpart provides guidance to States to implement the services provided under the Act, as amended by WIA, in a One-Stop delivery system environment.

(b) Except as otherwise provided, the definitions contained in this part 652 and section 2 of the Act apply to this subpart.

§ 652.201 What is the role of the State Agency in the One-Stop delivery system?

(a) The role of the State Agency in the One-Stop delivery system is to ensure the delivery of services authorized under section 7(a) of the Act. The State Agency is a required One-Stop partner in each local One-Stop delivery system and is subject to the provisions relating to such partners that are described at 20 CFR part 662.

(b) Consistent with those provisions, the State agency must:

(1) Participate in the One-Stop delivery system in accordance with section 7(e) of the Act;

(2) Be represented on the Workforce Investment Boards that oversee the local and State One-Stop delivery system and be a party to the Memorandum of Understanding described at 20 CFR 662.300 addressing operational issues of the One-Stop delivery system; and

(3) Provide these services as part of the One-Stop delivery system.

§ 652.202 May local Employment Service Offices exist outside the One-Stop delivery system?

(a) No.

(b) However, local Employment Service Offices may operate as affiliated sites, or through electronically or technologically linked access points as part of the One-Stop delivery system, provided the following conditions are met:

(1) All labor exchange services are delivered as a part of the local One-Stop delivery system in accordance with section 7(e) of the Act;

(2) The services described in paragraph (b)(1) of this section are available in at least one physical center from which job seekers and employers can access them; and

(3) The Memorandum of Understanding between the State Agency local One-Stop partner and the Local Workforce Investment Board meets the requirements of § 662.300.

§ 652.203 Who is responsible for funds authorized under the Act in the workforce investment system?

The State Agency retains responsibility for all funds authorized under the Act, including those funds authorized under section 7(a) required for providing the services and activities delivered as part of the One-Stop delivery system.

§ 652.204 Must funds authorized under section 7(b) of the Act (the Governor's reserve) flow through the One-Stop delivery system?

No. These funds are reserved for use by the Governor for the three categories of activities specified in section 7(b) of the Act. However, these funds may flow through the One-Stop delivery system.

§ 652.205 May funds authorized under the Act be used to supplement funding for labor exchange programs authorized under separate legislation?

(a) Section 7(c) of the Act enables States to use funds authorized under section 7(a) or 7(b) of the Act to supplement funding of any workforce activity carried out under WIA.

(b) Funds authorized under the Act may be used under section 7(c) to

provide additional funding to other activities authorized under WIA if:

(1) The activity meets the requirements of the Act, and its own requirements;

(2) The activity serves the same individuals as are served under the Act;

(3) The activity provides services that are coordinated with services under the Act; and

(4) The funds supplement, rather than supplant, funds provided from non-Federal sources.

§ 652.206 May a State use funds authorized under the Act to provide ''core services'' and ''intensive services'' as defined in WIA?

Yes. Funds authorized under section 7(a) of the Act must be used to provide core services as defined at 20 CFR 663.150 and may be used to provide intensive services as defined at 20 CFR 663.200. Funds authorized under section 7(b) of the Act may be used to provide core or intensive services. Core and intensive services must be provided consistent with the requirements of the Act.

§ 652.207 How does a State meet the requirement for universal access to services provided under the Act?

(a) A State has discretion in how it meets the requirement for universal access to services provided under the Act. In exercising this discretion, a State must meet the Act's requirements.

(b) These requirements are:

(1) Labor exchange services must be available to all employers and job seekers, including unemployment insurance (UI) claimants, veterans, migrant and seasonal farm workers, and individuals with disabilities;

(2) The State must have the capacity to deliver labor exchange services to employers and job seekers, as described in the Act, on a Statewide basis through:

(i) Self-service,

(ii) Facilitated self-help service; and

(iii) Staff-assisted service;

(3) In each Workforce Investment Area, in at least one physical center, staff funded under the Act must provide core and applicable intensive services including staff-assisted labor exchange services.

(4) Those labor exchange services provided under the Act in a Workforce Investment Area must be described in the Memorandum of Understanding.

§ 652.208 How are core services and intensive services related to the methods of service delivery described in § 652.207(b)(2)?

Core services and intensive services may be delivered through any of the three methods of service delivery described in § 652.207(b)(2). These methods are:

(a) Self-service;

(b) Facilitated self-help services; and

(c) Staff-assisted service.

§ 652.209 What are the requirements under the Act for providing reemployment services to referred UI claimants?

In accordance with section 3(c)(3) of the Act, a State must provide reemployment services to UI claimants for whom such services are required as a condition for receipt of UI benefits. The State Agency, through the One-Stop delivery system, must provide reemployment services to UI claimants. Services must be appropriate to the needs of the UI claimants who are referred to reemployment services under any Federal or State UI law and must be provided to the extent that funds are available.

§ 652.210 What are the Act's requirements for administration of the work test and assistance to UI claimants?

(a) State UI law or rules establish the requirements under which UI claimants must register and search for work in order to fulfill the UI work test requirements.

(b) Staff funded under the Act must assure that:

(1) UI claimants receive the full range of labor exchange services available under the Act that are necessary and appropriate to facilitate their earliest return to work;

(2) UI claimants requiring assistance in seeking work receive the necessary guidance and counseling to ensure they make a meaningful and realistic work search; and

(3) UI program staff receive information about a UI claimant's ability or availability for work, or the suitability of work offered to them.

§ 652.211 What are State planning requirements under the Act?

The State Agency designated to administer funds authorized under the Act must prepare and submit a five-year Statewide plan for the delivery of services provided under the Act in accordance with WIA regulations at 20 CFR 661.220. The State Plan must contain a detailed description of services that will be provided under the Act, which are adequate and reasonably appropriate for carrying out the provisions of the Act, including the requirements of section 8(b) of the Act.

§ 652.212 When should a State submit modifications to the five-year plan?

(a) A State has the authority to submit modifications to the five-year plan as necessary during the five-year period, and to do so in accordance with the same collaboration, notification, and other requirements that apply to the original plan. Modifications are likely to be needed to keep the strategic plan a viable and living document over its five-year life.

(b) That portion of the plan addressing the Act must be updated to reflect any reorganization of the State Agency designated to deliver services under the Act, any change in service delivery strategy, any change in levels of performance, or any change in services delivered by public merit-staff employees.

§ 652.213 What information must a State include when the plan is modified?

A State must follow the instructions for modifying the strategic five-year plan as addressed in 20 CFR 661.230.

§ 652.214 How often may a State submit modifications to the plan?

A State may modify its plan as changes occur in Federal or State law or policies, Statewide vision or strategy, or if changes in economic conditions occur. A State must submit modifications to adjust service strategies if performance goals are not met.

§ 652.215 Do any provisions in WIA change the requirement that publicly funded merit-staff employees must deliver services provided under the Act?

No. The Secretary has the legal authority to set staffing standards and requirements to ensure the effective delivery of services provided under the Act. The Secretary requires that labor exchange services provided under authority of the Act, to include services to veterans, be provided by public merit-staff employees. This interpretation is authorized by and consistent with the provisions in sections 3(a) and 5(b) of the Act and the Intergovernmental Personnel Act.

§ 652.216 May the One-Stop operator provide guidance to a merit-staffed employee under the Act?

Yes. The One-Stop system envisions a partnership in which Wagner-Peyser Act labor exchange services are coordinated with other activities provided by other partners in a One-Stop setting. As part of the local Memorandum of Understanding, One-Stop partners may agree to have staff receive guidance from the One-Stop operator regarding the provision of labor exchange services. Personnel matters, including compensation, personnel actions, terms and conditions of employment, performance appraisals, and accountability of merit-staff employees funded under the Wagner-

Peyser Act, remain under the authority of the State Agency (including such matters that are delegated to any other public agency). Such guidance given to employees must be consistent with the provisions of the Wagner-Peyser Act.

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