

**DEPARTMENT OF LABOR****Employment and Training Administration****20 CFR Part 641**

RIN 1205-AB47

**Senior Community Service Employment Program; Performance Accountability**

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** The Employment and Training Administration (ETA) of the Department of Labor (Department) is issuing this Interim Final Rule establishing new performance accountability measures for the Senior Community Service Employment Program (SCSEP). New measures are necessary due to the 2006 Amendments to Title V of the Older Americans Act. Specifically, this rule amends 20 CFR part 641 Subpart G—Performance Accountability and corresponding definitions found in Subpart A—Purpose and Definitions. This notice also solicits public comment on this Interim Final Rule which the Department will consider when it issues a Final Rule.

**DATES:** This rule is effective June 29, 2007. The Department invites interested persons to submit comments on this interim final rule. To ensure consideration, comments must be in writing and must be received on or before August 28, 2007. Comments received after that date will be considered to the extent possible.

**ADDRESSES:** You may submit comments, identified by Regulatory Information Number (RIN) 1205-AB47, by any of the following methods:

- *Federal e-Rulemaking Portal:* [www.regulations.gov](http://www.regulations.gov). Follow the Web site instructions for submitting comments.
- *Fax:* (202) 693-2766.
- *Mail:* Written comments, disk, and CD-Rom submissions may be mailed to Maria Kniesler Flynn, Administrator, Office of Policy Development and Research, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-5641, Washington, DC 20210.
- *Hand Delivery/Courier:* Maria Kniesler Flynn, Administrator, Office of Policy Development and Research, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-5641, Washington, DC 20210.

The Department will post all comments received on

[www.regulations.gov](http://www.regulations.gov) without making any change to the comments, including any personal information provided.

The [www.regulations.gov](http://www.regulations.gov) Web site is the Federal e-rulemaking portal and all comments posted there are available and accessible to the public. The Department recommends that commenters not include their personal information such as Social Security Numbers, personal addresses, telephone numbers, and e-mail addresses in their comments as such submitted information will become easily available to the public via the [www.regulations.gov](http://www.regulations.gov) Web site. Comments submitted through [www.regulations.gov](http://www.regulations.gov) will not include the e-mail address of the commenter unless the commenter chooses to include that information as part of their comment. It is the responsibility of the commenter to safeguard his or her information.

Postal mail delivery in Washington, DC, may be delayed due to security concerns. Therefore, the Department encourages the public to submit comments via the Internet as indicated above.

**Docket:** The Department will make all the comments it receives available for public inspection during normal business hours at the above address. If you need assistance to review the comments, the Department will provide you with appropriate aids such as readers or print magnifiers. The Department will make copies of the rule available, upon request, in large print and electronic file on computer disk. The Department will consider providing the rule in other formats upon request. To schedule an appointment to review the comments and/or obtain the rule in an alternate format, contact the office of Maria Kniesler Flynn at (202) 693-3700 (VOICE) or 1-800-877-8339 TTY/ASCII. Please note these are not toll-free numbers. You may also contact Ms. Flynn's office at the address listed above.

**FOR FURTHER INFORMATION CONTACT:** Adele Gagliardi, Senior Regulatory Specialist, Employment and Training Administration (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-5641, Washington, DC 20210; E-mail [gagliardi.adele@dol.gov](mailto:gagliardi.adele@dol.gov); Telephone (202) 693-3700 (this is not a toll-free number).

Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:**

The preamble to this Interim Final Rule is organized as follows:

- I. Background—provides a brief description of the purpose and timing of the Interim Final Rule.
- II. Summary and Explanation of the Interim Final Rule—discusses the substance of the rule.
- III. Administrative Information—sets forth the applicable regulatory requirements.

**I. Background**

On October 17, 2006, President Bush signed the Older Americans Act Amendments of 2006, Pub. L. 109-365 (2006 OAA Amendments). This law amended the statute authorizing the SCSEP and necessitates changes to the SCSEP regulations. (The Department will continue to use the name "Senior Community Service Employment Program" for this program, although the law refers to it in various terms.) The purpose of this Interim Final Rule is to implement changes to the SCSEP performance measurement system required by the 2006 OAA Amendments. The Department intends to issue a separate Notice of Proposed Rulemaking, proceeding under related RIN 1205-AB48, to implement additional changes to the SCSEP regulations necessitated by the 2006 OAA Amendments.

The SCSEP, authorized by Title V of the Older Americans Act, is the only federally-sponsored employment and training program targeted specifically to low-income older individuals who want to enter or re-enter the workforce. Participants must be 55 years of age or older with incomes no more than 125 percent of the Federal poverty level. The program offers participants training at community service employment assignments in public and non-profit so that they can gain on-the-job experience. The goals of the program are to move SCSEP participants into unsubsidized employment so that they can achieve economic self-sufficiency and to promote useful opportunities in community service activities. In the 2006 OAA Amendments, Congress expressed its sense of the benefits of SCSEP, stating, "placing older individuals in community service positions strengthens the ability of the individuals to become self-sufficient, provides much-needed support to organizations that benefit from increased civic engagement, and strengthens the communities that are served by such organizations." Pub. L. 109-365 § 516(2).<sup>1</sup>

<sup>1</sup> Section 501 of the Older Americans Act Amendments of 2006, Pub. L. 109-365, amended

The statute requires the Department to issue definitions of the indicators of performance through regulation. Section 513(b)(3). The statute also requires the Department to establish and implement the performance measures referred to in the statute as “core measures and additional indicators of performance” by July 1, 2007. Section 513(d)(4). The Department has determined that the most effective way to define the indicators of performance is to do so in conjunction with the rules that implement such definitions. Defining the performance measures and implementing them concurrently and in the same document is also more helpful to the grantees. In addition, given the importance of the measures in terms of corrective actions and the potential impact they could have on grantee funding, it is preferable to continue to describe and define the measures through regulation even though the statute only requires the Department to implement the definitions through regulation. Accordingly the Department is both defining and describing the indicators through this rule.

The Department is unable to promulgate these regulations through the normal notice and comment rulemaking process because of the July 1, 2007, statutory deadline. Development of this rule necessitated extensive consultation within the Department, among multiple Employment and Training Administration offices, the Solicitor's Office and the Office of the Assistant Secretary for Policy. Activities of this group included developing a strategy for promulgating the regulation, addressing policy and programmatic issues and drafting the regulatory text and explanatory preamble. In addition, the Department was required to establish and implement the new SCSEP performance measures after consultation with stakeholders. Pub. L. 109-365 § 513(b)(3). Therefore, the Department drafted, cleared internally, and published a notice in the **Federal Register** (published February 8, 2007, 72 FR 5999) in order to provide a fair and meaningful opportunity for stakeholders to respond. The Department received comments during the period announced in the notice and fully considered these comments, which informed the Interim Final Rule development. This process is described more thoroughly below. In addition, the Department needed to

examine potential Paperwork Reduction Act implications of this Interim Final rule as well as examine the Interim Final Rule under additional laws and Executive Orders which cover rulemaking. Finally, the Department needed to obtain all clearances required in rulemaking. Therefore, time only allowed for the Department to issue an Interim Final Rule. There is not time to draft, clear, and publish a Notice of Proposed Rulemaking, receive and respond to comments, and draft, clear, and publish a Final Rule by the July 1, 2007, deadline. Because § 513(a)(2)(C) of the statute prohibits funding grants until the Department and the grantee have agreed upon expected levels of performance, it is adverse to the public interest, and to the interest of those served under the SCSEP program as well as the grantees who seek to serve them, if the rule is delayed and a gap in services to individuals occurs. Therefore, the rule is being published as an Interim Final Rule so that the performance measures and the supporting definitions are effective immediately upon publication and without further delay. This approach will enable the Department and the grantees to negotiate performance agreements in time for all Program Year 2007 grants to be funded at the beginning of the Program Year.

Since the statute requires that the Department and each grantee reach agreement on the expected levels of performance for each of the core indicators before to the Department may fund the grants that will be subject to these new rules, starting with Program Year 2007, or July 1, 2007, the Department has made every effort to issue this Interim Final Rule in as timely a manner as possible and to assist grantees in meeting their obligations under the new performance requirements. To further assist grantees to adjust to the changes and to enable grantees to prepare for and to intelligently negotiate their performance goal for Program Year 2007, the Department previously issued a Training and Employment Guidance Letter (TEGL) describing the anticipated changes in the performance measures.

This Interim Final Rule supersedes the previously issued TEGL. If the Department determines that the information in this Interim Final Rule conflicts in a material way with the information previously issued through the TEGL, and has a material impact on the grantees' negotiated performance level goals, grantees will be allowed to renegotiate their performance level goals. The Department will make this

determination and will issue further guidance if necessary.

The Department sought public input on the SCSEP performance measures during the development of this Interim Final Rule in response to the statutory requirement that the Department establish and implement the new SCSEP performance measures after consultation with stakeholders. Specifically, section 513(a)(1) states that “[t]he Secretary shall establish and implement, after consultation with grantees, sub-grantees and host agencies under this title, States, older individuals, area agencies on aging and other organizations serving older individuals, core indicators of performance and additional indicators of performance for each grantee for projects and services carried out under this title.” The statute also instructs the Department to consult with stakeholders prior to defining the performance indicators. Pub. L. 109-365 § 513(b)(3). The Department satisfied these statutory requirements when it solicited public input on the definitions and implementation of the statutory performance measures in the **Federal Register** notice published February 8, 2007, 72 FR 5999.

The February 8, 2007, **Federal Register** notice specifically requested input on six topics: (1) The core indicators, (2) the new one-year retention indicator, (3) customer satisfaction, (4) other additional indicators including possibly retaining the SCSEP placement measure, (5) performance outcomes, and (6) other comments related to SCSEP performance measures. 72 FR 5999 (Feb. 8, 2007). The Department made extensive efforts to make grantees aware of the notice and inform them of the timeframe for submitting comments; the Department e-mailed every grantee and briefed grantees during several all-grantee conference calls. In response to the notice, the Department received comments from 28 persons or entities. In addition, the Department presented a summary of the 2006 OAA Amendments at six regional SCSEP grantee training conferences in January, February, and March of 2007, and provided an opportunity for questions and comments.

The Department carefully considered the comments received as we developed the content of this rule. In the preamble discussion of the regulatory changes, the Department discusses input we received from stakeholders. A full summary of the input received on each subject is available on the SCSEP Web site at <http://www.doleta.gov/seniors>.

Although the Department solicited stakeholder input through the February

the various provisions of title V of the Older Americans Act of 1965 (42 U.S.C. 3056 *et seq.*). For ease of reference, we will refer to the changes to title V made by the 2006 OAA Amendments by referring to the relevant sections of title V as those sections were reflected in the Amendments.

8, 2007, notice and carefully considered the concerns raised through the process, the Department solicits comments on all sections of this Interim Final Rule. The Department particularly invites comments addressing any concerns that this Interim Final Rule significantly compromises the ability of grantees, in areas where a substantial population of minority individuals reside, to serve their targeted population of minority older individuals, in accordance with the requirements of section 514(f) of the 2006 OAA Amendments.

The SCSEP performance measures have evolved over time. Program-specific measures to monitor the performance of each SCSEP grantee were first codified in the 2000 Amendments to the OAA. The 2000 OAA Amendments required the following performance measures:

1. The number of persons served, with particular consideration given to individuals with greatest economic need, greatest social need, or poor employment history or prospects, and individuals who are over the age of 60;
2. Community services provided;
3. Placement into and retention in unsubsidized public or private employment;
4. Satisfaction of the enrollees, employers, and their host agencies with their experiences and the services provided; and
5. Any additional indicators of performance that the Secretary determines to be appropriate to evaluate services and performance.

Pub. L. 106-501 § 513(b).

When the Department implemented the 2000 OAA Amendments, it also began employing the "common measures" in the SCSEP performance system. The "common measures" are a government-wide initiative to apply uniform accountability measures to federally-funded employment and training programs, including those administered by the Department of Labor. Adoption of these common measures helps implement the President's Management Agenda for budget and performance integration as well as reduce barriers to integrated service delivery through local One-Stop Career Centers. To date, ETA has implemented the common performance measures for the majority of its workforce programs, including the SCSEP.

The common performance measures are:

1. Entered employment;
2. Retention in employment; and
3. Average earnings.

The value of implementing common performance measures is in the ability

to describe in a similar manner the core purposes of the workforce system: How many people found jobs? Did they stay employed? What did they earn? Historically, multiple sets of performance measures have burdened grantees, as they are required to report performance outcomes based on varying definitions and methodologies. By minimizing the different reporting and performance requirements, common performance measures can facilitate the integration of service delivery, reduce barriers to cooperation among programs, and enhance the ability to assess the effectiveness and impact of the workforce investment system. Current Department guidance on the common measures is contained in TEGL No. 17-05, issued on February 17, 2006. This TEGL is available at [http://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=2195](http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2195).

The Department previously identified "program efficiency" as a common measure for federal job training and employment programs, and listed program efficiency as a common measure in the last SCSEP Final Rule. 69 FR 19015, 19064 (April 9, 2004). However, since TEGL No. 17-05, grantees have not been required to report on program efficiency. Therefore, this measure is not addressed in this Interim Final Rule.

This Interim Final Rule marks the beginning of the next phase of the SCSEP performance measures. The 2006 OAA Amendments direct the SCSEP to track the following performance measures:

Indicators of Performance:

(1) Core Indicators—The core indicators of performance \* \* \* shall consist of—

(A) Hours (in the aggregate) of community service employment;

(B) Entry into unsubsidized employment;

(C) Retention in unsubsidized employment for six months;

(D) Earnings; and

(E) The number of eligible individuals served, including the number of participating individuals described in subsection (a)(3)(B)(ii) or (b)(2) of section 518.

(2) Additional Indicators—The additional indicators of performance \* \* \* shall consist of—

(A) Retention in unsubsidized employment for 1 year;

(B) Satisfaction of the participants, employers, and their host agencies with their experiences and the services provided;

(C) Any other indicators of performance that the Secretary

determines to be appropriate to evaluate services and performance.

Pub. L. 109-365 § 513(b).

Note that core indicators B, C, and D are consistent with the common measures.

All of these indicators are discussed and defined below.

## II. Summary and Explanation of the Interim Final Rule

This Interim Final Rule addresses only the SCSEP performance measures; it amends Subpart G, and related definitions located in Subpart A, of the SCSEP regulations. As discussed in the background section, the Department is proceeding separately with this portion of the regulation because of certain provisions of the 2006 OAA Amendments which mandate implementation of the new performance indicators during the Program Year 2007 grant solicitation and award process. The Department will be proceeding with the normal rulemaking process as it promulgates regulations addressing the remainder of the changes the 2006 OAA Amendments made to the SCSEP.

As the Department implements these performance measures, it remains cognizant of Congress' statement that the indicators "shall be designed to promote continuous improvement in performance." Pub. L. 109-365 § 513(a)(2)(B). The Department remains committed to a system-wide continuous improvement approach grounded upon proven quality principles and practices. The Department is implementing these performance measures with the goal of further aligning the SCSEP with performance measures used in the rest of the workforce investment system. Accordingly, the Department purposely defined the entry into unsubsidized employment, retention in unsubsidized employment for six months, and earnings performance measures to be consistent with the common performance measures which are intended for similar, federally-funded employment and training programs serving adults. Further, the Department defines the one-year retention indicator to align with the equivalent indicator used for ETA's Adult and Dislocated Workers programs.

### Subpart A—Purpose and Definitions

What definitions apply to this subpart? (§ 641.140)

Section 641.140 of the SCSEP regulations provides definitions for the SCSEP, including those definitions relevant to the SCSEP performance measures. This Interim Final Rule, however, includes only those

definitions relevant to the performance measures that are new or have been changed. Definitions relevant to performance measures that have not changed, as well as SCSEP definitions that are not directly related to performance measures, remain in the existing rule.

This Interim Final Rule contains new definitions. Several of them clarify which participants satisfy the core indicator that tracks “the number of participating individuals described in subsection (a)(3)(B)(ii) or (b)(2) of section 518.” Pub. L. 109–365 § 513(b)(1)(E). The Department received several suggestions for these definitions; many aspects of that input are mentioned in the descriptions of each definition, below. Several commenters encouraged the Department to keep current definitions and/or adopt definitions that are familiar to the SCSEP, including the definitions from the SCSEP Data Collection Handbook. Our general approach to defining new terms in this rule is consistent with these comments; our goal was to minimize the number of new or potentially duplicative definitions. Accordingly, we attempted to define terms in a manner consistent with established definitions used in programs SCSEP grantees are familiar with, and in many cases those definitions also formed the basis for the definitions that exist in the Data Collection Handbook. For example, the definition of veteran comes from the Jobs for Veterans Act, which has been used by the SCSEP for years to distinguish which veterans qualify for a priority for SCSEP services.

Descriptions of the new definitions follow:

**Additional indicators:** Following the structure established in the 2006 OAA Amendments, we define additional indicators to distinguish them from core indicators; additional indicators are those indicators not subject to goals and corrective action. We currently implement only two additional indicators—one-year retention and customer satisfaction. These are the additional indicators required by the 2006 OAA Amendments. At this time, the Department declines to add any additional indicators, but the regulations reserve the Secretary’s authority, under section 513(b)(2)(C), to develop new additional measures when the Secretary determines that such additional indicators are appropriate for evaluation of services and performance.

**At risk for homelessness:** The Department defines at risk for homelessness in relation to the definition of homeless, such that a person is at risk for homelessness if the

person is likely to become homeless and is unable, using his or her own resources and support network, to obtain housing.

**Community service employment:** The 2006 OAA Amendments added a definition of community service employment. We took the definition here directly from the statute.

**Core indicators:** The 2006 OAA Amendments establish core indicators as a new category of indicators that are subject to goal-setting and corrective action. The indicators in the definition are those listed in the statute.

**Frail:** A few commenters urged various definitions from sources such as the Older Americans Act and the Journal of Gerontology. Another commenter suggested consultation with the Administration on Aging. We adopt the definition of frail that is in the Older Americans Act in order to promote consistency with other OAA programs.

**Homeless:** We adopt the definition of homeless that is in the McKinney-Vento Homeless Assistance Act; that Act’s definition of homeless has consistently been used by the SCSEP for data collection purposes. One commenter recommended that we adopt a definition of homeless contained in a bill pending in Congress; however, the Department determined that the more prudent course was to adopt a definition already in statute.

**Limited English Proficiency:** A few commenters urged various definitions from sources such as those used by the Department of Education and the Workforce Investment Act of 1998 (WIA). We adopt the definition of limited English proficiency (LEP) that is used by the Federal Interagency Working Group on Limited English Proficiency. The LEP Working Group was created at the request of Assistant Attorney General for Civil Rights and includes members representing more than 35 federal agencies; the group’s focus is to ensure that limited English proficient persons have meaningful access to federal and federally-assisted programs. Its Web site, maintained by the U.S. Department of Justice, is <http://www.lep.gov>. ETA and the Department’s Civil Rights Center adopted this definition for use in official guidance to the workforce system in 2004. That guidance may be viewed at [http://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=1488](http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=1488). Use of this definition by the SCSEP will promote consistency within the workforce system.

**Low employment prospects:** The Department interprets the statute’s term “low employment prospects” to be essentially equivalent to the similar

phrase which also appears in the statute, “poor employment prospects.” “Poor employment prospects” also appeared in the prior OAA Amendments and was defined in the prior SCSEP rule. The Department developed the definition of low employment prospects from the prior definition of poor employment prospects.

**Low literacy skills:** A few commenters urged various definitions such as those used by the Department of Education and WIA. In an effort to maintain program consistency, the Department defines low literacy skills based on a definition of a very similar term, “literacy skills deficient,” which is already in use in the SCSEP through the Data Collection Handbook.

**Most-in-need:** Most-in-need is a label for the core indicator that tracks “the number of participating individuals described in subsection (a)(3)(B)(ii) or (b)(2) of section 518.” Pub. L. 109–365 § 513(b)(1)(E).

**Persistent Unemployment:** The Department defines persistent unemployment by reference to the unemployment rate for a locale, as a rate that is more than 20 percent higher than the national average for two of the last three years.

**Rural:** We received suggestions about this definition that cited sources such as the Office of Management and Budget, the Administration on Aging, and the Economic Research Service at the Department of Agriculture. We have decided to align this definition of rural with that of the Rural Health Service at the U.S. Department of Health and Human Services; this is also consistent with the approach taken by the Economic Research Service at the Department of Agriculture. This definition is the broadest one available. First, the definition of rural includes areas not designated as metropolitan statistical areas by the Census Bureau. Information on which locations have been designated as metropolitan by the Census Bureau is available on the Census Bureau’s Web site at [census.gov/population/www/estimates/metrodef.html](http://census.gov/population/www/estimates/metrodef.html). To identify a particular Census tract, visit the Web page at [ffiec.gov/geocode/default.htm](http://ffiec.gov/geocode/default.htm) and enter a street address. Second, rural also includes segments of metropolitan counties that have been assigned a Rural Urban Commuting Area (RUCA) code between four and ten. To determine whether a portion of a metropolitan county has been so classified, readers may consult the RUCA codes, which can currently be located at the Web site of the Economic Research Service of the U.S. Department of Agriculture,

[ers.usda.gov/data/ruralurbancommutingareacodes/](http://ers.usda.gov/data/ruralurbancommutingareacodes/). Finally, Census tracts that are larger than 400 square miles, have a population density of less than 30 people per square mile, and have been assigned RUCA codes 2 or 3, are also considered rural. Further information on the Rural Health Service's rural classification system, including a list of areas classified by the Service as rural, can be found at their Web site, [ruralhealth.hrsa.gov/funding/eligibilitytestv2.asp](http://ruralhealth.hrsa.gov/funding/eligibilitytestv2.asp). The University of Washington has created a zip-code-specific approximation of rural status which can be downloaded at [depts.washington.edu/uwruca/data.html](http://depts.washington.edu/uwruca/data.html).

**Severe disability:** We adopt the definition of severe disability that is in the Older Americans Act.

**Severely limited employment prospects:** The Department developed the definition of severely limited employment prospects to relate to the definition of low employment prospects; a person faces severely limited employment prospects when that person has more than one significant barrier to employment.

**Veteran:** We define veteran by reference to the Jobs for Veterans Act, 38 U.S.C. 4215(a). The SCSEP has consistently used that statute to distinguish precisely which veterans qualify for SCSEP priority and thus it was a logical source of our definition. We note that under certain circumstances spouses of veterans qualify as veterans under the Jobs for Veterans Act.

The following terms were defined in the prior SCSEP rule but have been modified:

**Disability:** The only change to the definition of disability concerns the citation. The definition comes from the Older Americans Act, and the paragraph number to which the definition is assigned changed as a result of the 2006 OAA Amendments.

**National grantee:** We modify the definition of National grantee by removing the word "Federal" as a modifier to the word "public" to be consistent with the 2006 OAA Amendments, see Pub. L. 109-365 § 506(g)(5), and by making various technical corrections.

#### *Subpart G—Performance Accountability*

What performance measures/indicators apply to SCSEP grantees? (§ 641.700)

The 2006 OAA Amendments separate SCSEP performance measures into two categories, core and additional. The Department and each grantee must agree

upon goals for core indicator performance levels before the start of each program year. A grantee that fails to meet the agreed-upon core performance levels, which may be adjusted as discussed below, is subject to corrective action. Additional indicators are not subject to goal-setting and are, therefore, not subject to corrective action. However, the statute does mandate that the Department annually publish each grantee's performance on the additional indicators.

Section 513(a)(3)(b)(1) of the 2006 OAA Amendments lists the *core indicators*:

1. Hours (in the aggregate) of community service employment;
2. Entry into unsubsidized employment;
3. Retention in unsubsidized employment for six months;
4. Earnings;
5. The number of eligible individuals served, including the number of participating individuals described in subsection (a)(3)(B)(ii) or (b)(2) of section 518.

The Department received numerous comments about whether the fifth core indicator should be split into two indicators. Many commenters supported establishing two separate measures, with one measure for total persons served and one for "the number of participating individuals described in subsection (a)(3)(B)(ii) or (b)(2) of section 518." Respondents provided a variety of rationales for this position. For example, several respondents noted that this would be a better measure of services provided to those individuals with barriers to employment; one noted that this would ensure service to "high barrier populations"; one noted that combining measures would not give an accurate depiction of the individuals being served; and one noted that two measures can be beneficial for effective program management.

Several commenters expressed support for one combined measure, rather than two separate measures. These respondents also provided a range of rationales for their position. For example, one noted that grantees cannot control who enters the program and that many of the individuals that have attributes cited in the priority list cannot find unsubsidized employment in 27 months; one noted that one measure would promote more effective services and ensure services to those "at great risk" but falling outside the priority of service list; and one noted that, based on income eligibility requirements, all individuals eligible for SCSEP are effectively most-in-need and

so a separate measure for most-in-need is not necessary.

After considering this input, the Department has decided to divide the fifth core indicator into two separate core indicators: (1) The number of eligible individuals served, described in section 641.710(a)(5), and (2) the number of participating individuals described in subsection (a)(3)(B)(ii) or (b)(2) of section 518 (*i.e.*, most-in-need), described in section 641.710(a)(6)). This is consistent with current practice in which we have a separate measure for a narrower group of participants in need as well as with the recommendation of a majority of respondents who commented on this measure, and it more clearly tracks relevant program data than a combined indicator.

The statute then lists the *additional indicators*:

1. Retention in unsubsidized employment for one year;
2. Satisfaction of the participants, employers, and their host agencies with their experiences and the services provided; and
3. Any other indicators of performance that the Secretary determines to be appropriate to evaluate services and performance.

Pub. L. 109-365 § 513(a)(3)(b)(2).

An agreement to be evaluated on the core indicators of performance and to report information on the additional indicators of performance is a requirement for application for, and a condition of, all SCSEP grants. Pub. L. 109-365 § 513(a)(3).

The Department considered an additional indicator, SCSEP Placement. The SCSEP Placement indicator has tracked how many exiting participants were employed for 30 days within the first 90 days after program exit. Several stakeholders, however, argued against the need for doing so. Some expressed the view that the SCSEP has too many measures already and that the SCSEP should be evaluated on only the common measures, as is the case with other Department programs. Other commenters focused on the notion that the common measure "entered employment" indicator is sufficient to track placement and that the SCSEP placement rate is duplicative. The Department is persuaded that the potential benefit of tracking the SCSEP Placement measure does not outweigh the added burden on grantees. Accordingly, the SCSEP Placement indicator will no longer be required.

Several commenters argued in favor of retaining the SCSEP Placement indicator. Any grantee is welcome to continue its use, as grantees may use

additional performance measures that assist them in managing their SCSEP project.

We received some comments suggesting that the Department adopt various other additional indicators, such as a measure to record recruitment; and measures related to the unique aspects of SCSEP (*i.e.*, community service and service to a specific population). Other respondents urged us not to adopt any more indicators. Although the statute allows the Department to establish “[a]ny other indicators of performance that the Secretary determines to be appropriate to evaluate services and performance” we choose not to establish any further indicators at this time. Again, this course was chosen because any potential benefits of additional reporting do not outweigh the costs of that reporting.

How are the performance indicators defined? (§ 641.710)

#### Core Indicators

1. *Hours (in the aggregate) of community service employment.* Hours (in the aggregate) of community service employment compares the total number of hours of community service provided by each SCSEP grantee to the number of community service hours funded by the grant. Current practice is for SCSEP grantees to report the number of hours of community service; that is, the number of hours that participants worked at host agencies. In order to provide a meaningful way to assess and compare performance, however, it is necessary to transform the number of hours into a community service participation rate. The Department began computing such a rate during Program Year 2006. To calculate the rate, the Department takes the number of community service hours as reported by each grantee and divides that number by the total community service hours funded for the grantee, adjusted for minimum wage differences among the States and areas.

The Department received a variety of comments on this indicator. A number of these comments expressed support for this performance indicator because it relates to the community service goal of the SCSEP, and because community service employment assignments are a unique and vital aspect of the SCSEP that is valuable to participants as well as to communities. Several commenters encouraged the Department in its new practice of transforming the raw data provided by grantees into a rate that can be the subject of a performance goal. A few respondents suggested definitions for this indicator; these comments

included recommendations that the performance measure for hours of community service employment be determined by (1) comparing the number of community service hours provided to the potential number of community service hours based on the average current participants; and (2) dividing the actual number of community service hours completed by the potential number of community service hours that could be completed (Enrollee Wages and Fringe Benefits divided by the hourly community service cost). Finally, a commenter also suggested that participant training for computer skills and soft skills be counted as community service hours because of the importance of developing such skills in today’s workforce. Soft skills are short-term pre-vocational services, including development of learning skills, communication skills, interviewing skills, punctuality, personal maintenance skills and professional conduct, to prepare individuals for unsubsidized employment.

At this time, the Department has decided not to change to the way this indicator is currently calculated. While a few commenters suggested slight revisions to the current definition, the Department declines to adopt those suggestions at present. Though we acknowledge that computer and soft skills are important for many jobs in current employment market, the 2006 OAA Amendments define community service employment to mean part-time, temporary employment (the full definition is included in the definitions section of these regulations, § 641.140). Furthermore, we concur with those commenters that find value in data quantifying the hours worked by SCSEP participants in service to their communities.

Accordingly, grantees will continue to report the raw number of hours of community service as they have in the past. The Department clarifies, however, that hours of paid participation in non-host agency training such as classroom training and on-the-job experience, are excluded from the hours of community service reported by grantees. Hours spent on such paid training are also excluded from the total number of community service hours funded (the denominator when the Department calculates the rate); excluding non-host agency paid training from both figures avoids penalizing grantees that provide such training to their participants.

2. *Entry into unsubsidized employment.* The 2000 OAA Amendments defined placement into unsubsidized employment so that it

measured how many exited participants had obtained paid employment for 30 days within the 90-day period following their program exit. Pub. L. 106–501 § 513(c)(2)(A). The 2006 OAA Amendments eliminate that statutory definition, and instead require the Department to define each of the indicators by regulation after consultation with stakeholders. To more fully align the SCSEP with the indicators required of other federally-funded employment and training programs, the Department has decided to define this core indicator in the same manner as the common measures entered employment indicator. We note that while we did not receive many comments on this indicator, the input we did receive generally favored adoption of the common measures and alignment with WIA.

TEGL 17–05, which explains ETA’s common measures policy, describes entered employment as, “[o]f those who are not employed at the date of participation: the number of participants who are employed in the first quarter after the exit quarter divided by the number of adult participants who exit during the quarter.” Grantees have been reporting on this indicator already, and there will not be any change in their reporting at this time.

3. *Retention in unsubsidized employment for six months.* As with entry into unsubsidized employment, the 2006 OAA Amendments eliminated the 2000 OAA Amendments’ definition of six-month retention, and charged the Department with defining the indicators by regulation.

The Department has decided to define retention in unsubsidized employment for six months in the same manner as the common measures employment retention measure; this approach is generally consistent with the few comments we received on this indicator. Using this definition will decrease the burden on grantees, as the Department previously required grantees to report on both the former statutory six-month indicator (measured 180 days after program exit) as well as the common measures employment retention measure. Grantees will no longer be required to conduct a follow-up 180 days after placement, as they have been doing to comply with the previous statutory retention indicator.

TEGL 17–05 describes the common measures employment retention indicator as, “[o]f those who are employed in the first quarter after the exit quarter: The number of adult participants who are employed in *both* the second and third quarters after the

exit quarter *divided* by the number of adult participants who exit during the quarter.” Again, grantees have already been reporting on this indicator, and there will be no change to their reporting at this time.

4. *Earnings*. When SCSEP regulations were last published in April 2004, the earnings common measure compared the difference in earnings pre- versus post-program participation. The Department subsequently revised its earnings measure in TEGL 17-05 in response to concerns that focusing on the change in earnings provided a disincentive to serving people with previous work experience, especially those with higher pre-program wages, and that in practice the measure was more likely to indicate participants’ previous earnings history than a measure of program effectiveness. With the revision, the focus of the earnings measure shifted to post-program earnings. The Department implemented a new methodology for reporting the earnings measure, which looks at wages over a six month period following program exit (average earnings). SCSEP grantees have been reporting on the average earnings common measure for participants who entered the program on or after July 1, 2005, since the first quarter of Program Year 2006 and there will be no change to their reporting at this time.

The Department received a small number of comments on the earnings measure. Some commenters recommended eliminating this measure; however, the 2006 OAA Amendments require an earnings measure so the Department does not have the discretion to eliminate it. We also received a comment encouraging the Department to calculate earnings based on wages earned at any time during a quarter (rather than a specific date), and a suggestion that earnings increase should be measured from entry in the program to the earnings at six months.

In order to align with similar, federally-funded employment and training programs, the Department has determined that earnings will be defined in the same manner as the average earnings common measure. TEGL 17-05 describes average earnings as, “[o]f those adult participants who are employed in the first, second and third quarters after the exit quarter: The total earnings in the second quarter *plus* total earnings in the third quarter after the exit quarter *divided* by the number of adult participants who exit during the quarter.” It is important to note that this measure looks only at those individuals who are included in the retention measure, so the earnings are a reflection

of what participants who are still working are earning. Previous earnings measures counted program exiters who were not still employed, which had the effect of lowering the outcomes and distorted the outcomes of the measure. By including those who were not employed in the earnings measure, it was difficult to determine how much those who were employed were actually earning.

A few respondents encouraged the Department to facilitate grantee access to unemployment insurance wage records, which would make it much easier to capture entered employment, retention, and earnings data. The Department is always interested in improving data collection methods, and we will continue to explore the possibility of access to unemployment insurance wage records as an option for future implementation.

5. *Number of eligible individuals served*. The 2006 OAA Amendments list “the number of eligible individuals served, including the number of participating individuals described in subsection (a)(3)(B)(ii) or (b)(2) of section 518” as the fifth and final core indicator. As discussed above, the Department has decided it will continue its current practice of dividing this indicator into two measures to clearly track relevant program data and for ease of reporting.

The first portion of this indicator, the number of eligible individuals served (also referred to as the service level) has been reported by SCSEP grantees for years, and there is no change in the reporting requirements as a result of the 2006 OAA Amendments. The number of eligible individuals served performance measure will continue to be calculated by comparing the total number of participants served to a grantee’s authorized number of positions, adjusted for the differences in minimum wage among the States and other areas.

6. *Most-in-need*. The second portion of the statutory fifth and final core indicator, “the number of participating individuals described in subsection (a)(3)(B)(ii) or (b)(2) of section 518” establishes the most-in-need indicator.

The Department received numerous comments concerning the most-in-need indicator. In addition to providing feedback on the question of whether to divide the fifth indicator into two measures, several respondents discussed the list of characteristics of those to whom a priority of service will be given. The statutory priority list contributes to the most-in-need list. However, to the extent that these comments focused on priority requirements, we have not incorporated

the comments into this Interim Final Rule because the scope of this rule is limited to the performance measurement system. Non-performance measure changes to the SCSEP required by the 2006 OAA Amendments, such as the new priority characteristics, will be addressed in a forthcoming Notice of Proposed Rulemaking.

Subsection (a)(3)(B)(ii) of section 518 lists the factors relevant to requesting a waiver to the new 48-month limit on program participation. It states that a grantee may request an increased period of participation for individuals who have a severe disability; are frail or are age 75 or older; meet the eligibility requirements related to age for, but do not receive, benefits under Title II of the Social Security Act (42 U.S.C. 401 *et seq.*); live in an area with persistent unemployment and are individuals with severely limited employment prospects; or have limited English proficiency or low literacy skills. Subsection (b)(2) of section 518 lists characteristics (other than age) of individuals who have priority for SCSEP services. Priority is to be given to individuals who: Have a disability; have limited English proficiency or low literacy skills; reside in a rural area; are veterans; have low employment prospects; have failed to find employment after utilizing services provided under title I of WIA; or are homeless or at risk for homelessness.

The statute is written in such a way that a participant with any one characteristic from either the waiver list or the priority list will be included in the most-in-need performance measure. For ease of administration, the Department has consolidated these two lists into one list of most-in-need characteristics. Some characteristics, for example, low literacy skills, are listed in both subsection (a)(3)(B)(ii) and subsection (b)(2) of section 518; such characteristics are only listed once in the most-in-need list. One statutory description of a characteristic actually contains two characteristics (“are frail or are age 75 or older,” Pub. L. 109-365 § 518 (a)(3)(B)(ii)(II)), and so those characteristics are listed separately here. Each of the thirteen characteristics on the most-in-need list will be given the same weight.

Because some characteristics, such as poor employment prospects, are shared by most SCSEP participants, all or nearly all participants may qualify as most-in-need. To distinguish among the level of grantees’ efforts to enroll participants with additional serious barriers to employment, and to make the most-in-need measure a more effective assessment of grantees’ compliance with statutory priorities, grantees will report

on each characteristic and the most-in-need measure will be an average of the total number of characteristics per participant served. For example, if a 70 year-old veteran with a severe disability who lives in a rural area enrolls in the SCSEP, that participant will be marked as possessing four of the most-in-need characteristics: Veteran, disability, severe disability, and rural resident. To restate, then, the Department will define most-in-need by counting the total number of the most-in-need characteristics for all participants and dividing by the number of participants served.

Most-in-need is a core indicator and is, therefore, subject to goal-setting. However, the 2006 OAA Amendments significantly expanded the most-in-need list of characteristics. While the most-in-need list used to contain four characteristics (individuals over age 60 who have the greatest economic need, greatest social need, or poor employment history or prospects), the list now contains thirteen characteristics. Because there is not yet a body of performance data on the new characteristics, it is not possible to set rational goals for the first program year for this indicator. Accordingly, the Department will use Program Year 2007 as a baseline year so that grantees and the Department may collect sufficient data to set a meaningful goal for this measure for Program Year 2008. We intend that all grantees will be required to negotiate goals for and be held accountable to this measure in Program Year 2008.

At the conclusion of Program Year 2007, the Department will be able to report on the average number of most-in-need characteristics per participant for each grantee, as well as the total number of participants exhibiting each characteristic.

#### Additional Indicators

1. *Retention in unsubsidized employment for one year.* The 2006 OAA Amendments include retention in unsubsidized employment for one year as an additional indicator. This is a new indicator for the SCSEP.

Many respondents commented on this measure. In terms of choosing the time at which to measure one-year retention: no one recommended measuring one-year retention during the 5th quarter after the exit quarter, a few commenters recommended the 365th day, and many commenters encouraged the Department to measure this indicator during the 4th quarter after the exit quarter. One commenter recommended measuring one-year retention during the fourth quarter but not later than the 365th day.

Another commenter suggested this indicator be measured during the twelfth month after the date the unsubsidized employment began.

Consistent with the majority of comments received on this question, the Department is defining this indicator to align with the WIA one-year retention performance measure. ETA defined the WIA one-year retention measure in its WIA Annual Report, General Reporting Instructions, Revised 2006, as, “[o]f those who are employed in the first quarter after the exit quarter: the number of participants who are employed in the fourth quarter after the exit quarter *divided* by the number of participants who exit during the quarter.” This measure looks only at those individuals who are included in the entered unsubsidized employment indicator.

By examining whether participants are employed in the fourth quarter after the quarter of exit, grantees will be focused on whether participants who entered unsubsidized employment are still employed approximately one calendar year after exiting the SCSEP. For example, if a participant exits during the first quarter of the calendar year (between January 1 and March 31), the fourth quarter after the exit quarter will be the first quarter of the next calendar year (January 1 to March 31). Retention is measured at one year, only one quarter after measuring retention at six months, because the one-year retention measure has been determined by the Department to most accurately capture retention twelve months after program exit.

The Department received many comments expressing the view that obtaining follow-up data one year after program exit will be a challenge. One commenter noted that while participants are generally grateful for the services provided through the SCSEP, participants sometimes feel “a sort of infringement” about providing follow-up information. One commenter noted that employers sometimes hesitate to release employment and wage information despite being provided with a release signed by the participant. One commenter noted that in her experience it is difficult to maintain participant contact more than six months after program exit; similarly, another commenter pointed out that securing follow-up information becomes more difficult the longer the participant has been exited from the SCSEP. Another commenter maintained that it may be difficult for participants who satisfy the new priority characteristics to remain employed for one year. One commenter argued that grantees should

not be penalized if follow-up data is unobtainable; another contended that grantees should not be punished if a participant must exit the workforce due to failing health before one-year retention gets measured. Finally, one commenter suggested that the Department delay implementation of the one-year retention measure until the SCSEP gains access to Unemployment Insurance wage records.

The Department recognizes that obtaining one-year retention data may prove to be a demanding task. However, the 2006 OAA Amendments require a one-year indicator, and the Department must follow the mandates of the statute. The Department remains available to provide technical assistance as grantees implement this new indicator. Indeed, it is our intention to share with grantees whatever information we can that will facilitate this data collection process. And, as stated with regard to the earnings measure, the Department has been exploring options for access to unemployment insurance wage records as an option for future implementation. Finally, note that we have no current intention of altering the exclusion policies relating to participants that must exit the program or the workforce due to extraordinary circumstances such as ill health. As listed in TEGL 17-05, the circumstances for excluding participants in the common measures calculations include institutionalization, health/medical issues for self or family, deceased, and called to active duty from the reserves.

2. *Satisfaction of the participants, employers, and their host agencies with their experiences and the services provided.* The 2006 OAA Amendments continue the customer satisfaction indicator. The Department envisions no change in this reporting requirement at this time. Grantees will continue to track three distinct measures of customer satisfaction: one measure for participant satisfaction, one measure for employer satisfaction, and one measure for host agency satisfaction. Customer satisfaction for all three groups will continue to be determined using an established methodology.

The Department received a handful of comments on this performance measure. Several commenters recommended that the Department maintain the current system because the information received is valuable and the system appears to be working satisfactorily. A small number of commenters suggested that the Department entirely eliminate customer satisfaction surveys or at least not use them as a performance measure. Several commenters suggested that customer satisfaction surveys are either too costly

to administer, do not add value to the program, or should be administered less frequently than every year. There was also a range of comments on related issues: A small number of commenters suggested that the Department not conduct the satisfaction surveys in Program Year 2006 because the recent national grant competition would lead to data that is not useful; some respondents offered suggestions on how to improve the survey instrument such as convening focus groups to refine survey questions, shortening the surveys, and adding more questions to the surveys; and one commenter suggested that the Department, rather than the grantees, conduct the surveys of employers.

As stated with regard to the other statutorily-mandated performance measures, it is not within the scope of the Department's discretion to eliminate the customer satisfaction indicator, and the surveys will be administered during Program Year 2006. There are, however, plans for a pilot project in 2007 to test the feasibility of the Department conducting the employer surveys. The Department will take other commenters' suggestions under advisement.

To summarize, the Department will now be collecting data on eight performance indicators, six of which are core indicators, subject to goal-setting:

Core Indicators:

- (1) Hours (in the aggregate) of community service employment;
- (2) Entry into unsubsidized employment (common measure);
- (3) Retention in unsubsidized employment for six months (common measure);
- (4) Earnings (common measure);
- (5) Number of eligible individuals served;
- (6) The number of most-in-need individuals served/number of participating individuals described in subsection (a)(3)(B)(ii) or (b)(2) of section 518 (second part of fifth statutory core indicator, treated here as separate indicator).

Additional Indicators:

- (1) Retention in unsubsidized employment for one year;
- (2) Satisfaction of the participants, employers, and their host agencies with their experiences and the services provided.

By using the SCSEP Performance and Results Quarterly Progress Report, or SPARQ, system, grantees only need to input the raw data, and the data management system will complete the performance measure calculations. Performance measure results may be viewed at virtually any time by producing a grantee or sub-grantee

Quarterly Progress Report. Grantees are also provided with data quality reports which indicate the existence of any missing or impermissible data values.

How will the Department and grantees initially determine and then adjust expected levels of performance for the core performance measures? (§ 641.720)

The Department and SCSEP grantees have been reaching agreement on performance levels for several years and the Department does not envision any change at this time to the process for reaching agreement. The performance levels will continue to be agreed upon before the beginning of each Program Year. The Department will continue to initially propose a baseline performance level, taking into consideration such things as grantees' past performance, the need for continuous improvement, and the statutory adjustment factors described in § 641.720(b). A grantee may respond with data on either the statutory adjustment factors or other relevant dynamics to alter the proposed goals. At the conclusion of this process, the parties will form agreement on performance levels for the coming Program Year. A grantee may submit comments to the Department concerning the grantee's satisfaction with the negotiated levels; those comments will be made available for public review.

Section 641.720(a)(5) implements another new provision in the 2006 OAA Amendments which concerns making public the agreed-upon performance levels. Once all agreements have been reached, the Department will make available for public review the final expected levels of performance for each grantee, including any comments submitted by any grantee about the grantee's satisfaction with the agreed-upon levels.

The Department received a few comments about the process of reaching agreement on the expected levels of performance, and on the goals themselves. A small number of respondents expressed general support for the current process, and a small number of commenters suggested that in the goal-setting process more weight should be given to grantee input. There were also comments suggesting that the same performance goals be established for all national grantees or that the Department make public the specific criteria and rationale used to justify different goals for each grantee.

The Department elects to retain its current process of reaching agreement on performance goals as this process already allows for significant grantee input, and is an objective, data-driven process. We will not set the same goals

for all national grantees because that would not account for the varying performance levels among the grantees, nor would allow for reasonable levels of continuous improvement. In terms of the information available to grantees about the goals set for other grantees, we note that all grantees have access to all other grantees' performance outcomes, as well as the performance levels initially proposed by the Department and the final, negotiated goals. Further, the Department explains to each grantee the objective, data-driven process used in reaching agreement on the performance levels, and the same process is consistently employed with all grantees. Finally, we again note the new provision in the 2006 OAA Amendments that allows grantees to submit, and the Department to make public, comments concerning a grantee's satisfaction with the agreed-upon levels.

The 2006 OAA Amendments create a graduated "floor" for the entry into unsubsidized employment indicator. That is, under the 2000 OAA Amendments, the entry into unsubsidized employment measure could not be less than 20 percent. The 2006 OAA Amendments require the following levels of entry into unsubsidized employment: 21 percent for Program Year 2007; 22 percent for Program Year 2008; 23 percent for Program Year 2009; 24 percent for Program Year 2010; and 25 percent for Program Year 2011. In the pursuit of continuous improvement, and based on the prior performance of the grantees, the Department has consistently established a performance level higher than the graduated floor set by statute for many grantees, and expects to continue to do so.

The 2006 OAA Amendments continue the practice of allowing grantees to petition for an adjustment to the agreed-upon performance levels, in recognition of the reality that circumstances affecting program performance can change markedly over the course of a year. The list of statutory adjustment factors has changed. Section 513(a)(2)(D) of the 2006 OAA Amendments limits the new adjustment factors to:

- (i)(a) High rates of unemployment in the areas served by a grantee, relative to other areas of the State involved or Nation; or
- (i)(b) High rates of poverty in the areas served by a grantee, relative to other areas of the State involved or Nation; or
- (i)(c) High rates of participation in TANF (Temporary Assistance for Needy Families, a program of block grants to States established under part A of title

IV of the Social Security Act (42 U.S.C. 601 *et seq.*)), in the areas served by a grantee, relative to other areas of the State involved or Nation;

(ii) Significant economic downturns in the areas served by the grantee or in the national economy;

(iii) Significant numbers or proportions of participants with one or more barriers to employment, including individuals described in subsection (a)(3)(B)(ii) or (b)(2) of section 518 (most-in-need), served by a grantee relative to such numbers or proportions for grantees serving other areas of the State or Nation;

(iv) Changes in Federal, State, or local minimum wage requirements; and

(v) Limited economies of scale for the provision of community service employment and other authorized activities in the areas served by the grantee.

In petitioning for an adjustment, grantees must support their case with data based on one or more of the factors from this list. Obtaining an adjustment to negotiated performance levels is a data-driven process.

How will the Department assist grantees in the transition to the new core performance indicators? (§ 641.730)

Section 513(d)(1) of the 2006 OAA Amendments calls for the Department, as soon as practicable after July 1, 2007, to determine whether grantees have, for Program Year 2006, met the performance levels set for the core indicators for Program Year 2007. The Department will also determine whether grantees have achieved the statutory percentages required for placement. If the Department determines that a grantee failed to achieve either the agreed-upon performance levels or the required placement percentages, the Department will provide technical assistance to assist that grantee to meet the agreed-upon performance levels and/or the applicable placement percentage during Program Year 2007. This technical assistance is for the purpose of assisting the grantees to be able to work successfully with the new performance measures and does not count as technical assistance provided under § 513(d)(2) or (3).

Further, and as discussed in relation to the most-in-need measure, Program Year 2007 will be treated as a baseline year for the most-in-need indicator so that grantees and the Department may gather data on the expanded list of characteristics. Expected levels of performance will be set for Program Year 2008 for the most-in-need measure.

How will the Department determine whether a grantee fails, meets, or exceeds the expected levels of performance for the core indicators and what will be the consequences of failing to meet expected levels of performance? (§ 641.740)

The Department will annually evaluate the performance of each grantee with respect to the levels achieved for each of the core indicators of performance in comparison to the levels of performance set by agreement (including any adjustments). As required by the statute, the Department's evaluation will be published, and information on each grantee's performance on the core indicators will be made available for public review. Information on the annual performance of each grantee with respect to the additional performance indicators will also be published and made available for public review. According to the statute, the Department will report the results of the Department's annual evaluation to Congress.

Sections 513(d)(2)(A) and 513(d)(3)(A) of the 2006 OAA Amendments require the Department to determine whether a grantee has met or failed to meet the agreed-upon levels of performance for the core indicators "not later than 120 days after the end of each program year." In evaluating Program Year performance, and although we did receive comments urging various other approaches, the Department will continue to aggregate the core indicators to determine if, on the whole, a grantee met its performance objectives (including any adjustment made.) The aggregate is calculated by combining the percentage of goals achieved on each of the individual core indicators to obtain an average score.

The Department received many comments concerning the evaluation of performance outcomes. Several commenters recommended staying with the methodology that is currently used, *i.e.*, requiring that grantees achieve at least 80 percent of the negotiated levels of performance for the aggregate of all the core indicators. Other commenters suggested that any grantee that meets or exceeds the negotiated (*i.e.*, "expected") levels of performance in the aggregate for a majority of the core indicators should be considered to have met the expected levels of performance. A small number of commenters suggested lowering the threshold for achievement of expected levels of performance in the aggregate for all core indicators to 65 percent.

The Department has decided to continue to determine that a grantee has failed to meet its performance measures when it does not meet 80 percent of the agreed-upon level of performance for the aggregate of all the core indicators. Performance in the range of 80 to 100 percent constitutes meeting the level for the core performance measures. Performance in excess of 100 percent constitutes exceeding the level for the core performance measures.

The Department also received comments expressing concern about achieving the expected levels of performance given a service population distinguished by hard-to-serve characteristics. A small number of respondents recommended separate performance goals for separate population groups, one for those most-in-need and one for those not most-in-need. A few commenters suggested separate performance goals for priority populations and participants who did not have the priority characteristics. The Department chooses to continue the practice of setting unified expected levels of performance for the SCSEP population as a whole, rather than setting separate goals for separate populations. Performance goals currently covering all participants already account for those individuals with priority and/or most-in-need characteristics because performance goals are based in large part on each grantee's past performance, which includes the outcomes of the most-in-need and priority participants. These populations will continue to be accounted for in the same manner.

If the Department determines that a State or national grantee fails to meet the expected levels of performance for the core indicators, the Department, after each year of such failure, will provide technical assistance to the failing grantee and will require the failing grantee to submit a corrective action plan not later than 160 days after the end of the Program Year. The corrective action plan must detail the steps the grantee will take to meet the expected levels of performance in the next Program Year.

A national grantee that fails to meet the expected levels of performance for the core indicators for four consecutive years (beginning with Program Year 2007) will not be allowed to compete in the subsequent SCSEP grant competition following the fourth consecutive year of failure but may compete in the next grant competition after that subsequent competition.

If the Department determines that a State grantee fails to meet the expected levels of performance for the core

indicators for three consecutive years (beginning with Program Year 2007) the Department will require the State to compete the SCSEP funds awarded under section 506(e) of the OAA for the first full Program Year following the Department's determination. The grantee that is then awarded the SCSEP grant will administer the SCSEP in that State and will be subject to the same rules and responsibilities as the State grantee. We emphasize that the failure of a State grantee does not mean that the SCSEP would cease or lapse in a State; it merely means that a different entity would be chosen to administer the existing program. Indeed, the 2006 OAA Amendments require that grant applicants be evaluated, among other things, for their ability to minimize disruption in services for participants and in community services provided. Pub. L. 109-365 §§ 503(a)(6), 514(c)(9).

A few commenters suggested that the same criteria for sanctions be applied to State and national grantees. Congress decided to apply corrective actions to national grantees who fail to achieve the expected levels of performance for four consecutive years, while State grantees are subject to corrective action if they fail to achieve their performance goals for three consecutive years and the Department must implement the statute as written.

Finally, under the 2000 OAA Amendments, each national grantee in a State was required to meet the goals agreed upon for the State as well as that grantee's national performance goals. The 2006 OAA Amendments alter those requirements so that national grantees are now held accountable only for their national goals.

Will there be performance-related incentives? (§ 641.750)

Section 517(c)(1) of the 2006 OAA Amendments authorizes the Department to re-obligate recaptured funds for incentive grants and section 502(e)(2)(B)(iv) authorizes the Department to award incentives for exemplary performance. Section 641.750 of these regulations addresses performance-based incentives for grantees. Such incentives may take the form of financial or non-financial awards. The Department will issue guidance setting out the procedures and standards that will be used to award the incentives. The Department will exercise this authority at its discretion.

#### *Other Comments Received*

The Department received a variety of comments that have not been mentioned above. A summary of the input received on each subject was posted on the

SCSEP Web site at <http://www.doleta.gov/seniors>. Some comments received suggested actions that contradict the 2006 OAA Amendments that we are implementing; the Department does not have the authority to act in contradiction to the statute. Several other comments exceeded the scope of this Interim Final Rule by discussing policies in the 2006 OAA Amendments that are not directly related to performance measures. A forthcoming Notice of Proposed Rulemaking (NPRM) will address all non-performance measure changes to the SCSEP resulting from the 2006 OAA Amendments; the public will be invited to comment on the NPRM, and the Department will consider the out-of-scope comments submitted here when it considers the comments that are submitted in response to the NPRM. Other performance-related comments will be taken under advisement.

### **III. Administrative Information**

#### *Regulatory Flexibility Analysis, Executive Order 13272, Small Business Regulatory Enforcement Fairness Act*

The Regulatory Flexibility Act (RFA), 5 U.S.C. Chapter 6, requires the Department to evaluate the economic impact of this rule with regard to small entities. The RFA defines small entities to include small businesses, small organizations including not-for-profit organizations, and small governmental jurisdictions. The Department must determine whether the rule imposes a significant economic impact on a substantial number of such small entities.

First, the Department has determined that this Interim Final Rule does not affect a substantial number of small entities. There are 74 SCSEP grantees; 50 of these are States and are not small entities as defined by the RFA. Six grantees are governmental jurisdictions other than States (four grantees are territories such as Guam, one grantee is Washington, DC, and another grantee is Puerto Rico). Governmental jurisdictions must have a population of less than 50,000 to qualify as a small entity for RFA purposes and the population of these six SCSEP grantees each exceeds 50,000. The remaining 18 grantees are non-profit organizations, which includes some large national non-profit organizations. Eighteen is simply not a substantial number; in fact, it is a minute number compared to the total number of non-profits in the country, which has been estimated to be over one million.

The Department has also determined that the economic impact of this Interim

Final Rule is not significant because the additional burden imposed by the new performance measurement system will not impose any considerable costs on grantees. In addition, all costs are covered by the SCSEP program money provided to grantees. Two performance measures that had been statutorily required in the 2000 OAA Amendments are now being dropped: the indicator known as "SCSEP placement," which determined that an unsubsidized placement had been accomplished if a participant worked 30 days within the first 90 days after program exit, and the retention indicator which examined whether the participant was still employed 180 days after program exit. Based on our program experience, we estimate that it takes approximately fifteen minutes for program staff to capture each of those indicators. Accordingly, grantees will see a cost savings equivalent to 30 minutes of program staff time per placement.

Conversely, two changes required by the 2006 OAA Amendments will necessitate additional expenditures by grantees. First, there are changes in the list of which characteristics qualify a participant as most-in-need that will require nominal staff time to implement, mostly at the beginning of the first Program Year under this Interim Final Rule as grantee staff adjust to the new list. We note that the most-in-need indicator itself is not new and so grantee staff are already used to the process of capturing information on a list of characteristics. Accordingly, and based on our program expertise, we estimate that grantee staff will spend an average of one minute per participant adjusting to the new list of characteristics.

Second, the addition of the one-year retention measure represents the most time-consuming change in the set of performance measures. Implementing this indicator requires grantee staff to conduct an additional follow-up with an employer to determine whether the participant is still employed. Given the considerable length of time that will elapse between program exit and this follow-up, grantee staff may have to initiate several contacts with an employer before the information sought can be gathered. The Department acknowledges the several comments received on this point in response to the notice published in the **Federal Register**. Accordingly, although we estimate that earlier follow-up contacts may each be successfully accomplished in fifteen minutes, based on our program expertise, we allow that the one-year retention follow-up will take an average of thirty minutes per placed participant.

For each placement, then, we have estimated that grantees will see cost savings equivalent to thirty minutes of staff time and will be required to invest a new thirty minutes of staff time. These amounts cancel each other out. The effect of the changes to the most-in-need indicator end up being the net effect of the new performance measures: An additional amount equal to one minute of staff time per participant.

Applying our program expertise we estimate that program staff persons perform work roughly equivalent to that performed by a grade 12, step 1 Federal employee. The base pay hourly rate for such an employee is \$26.53. Adding one-third additional funds for fringe benefits, the total hourly rate for this employee becomes \$35.28. One minute of such a person's time would cost \$0.59. The smallest SCSEP national grant award goes to two organizations that each have the capacity to serve 205 participants. Multiplying 205 times fifty-nine cents equals \$120.95. The smallest SCSEP national grants are over \$1.1 million. The expenditure of roughly \$121 is not significant in terms of a budget of over \$1.1 million. We further note that the capacity to serve participants is always related to the award amount, so national grantees with different (higher) grant awards would not spend any greater a percentage of their funds on the implementation of these performance measures even though they would serve more participants.

According to the above analysis, we therefore determine and certify that this Interim Final Rule does not impose a significant economic impact on a substantial number of small entities. The Department welcomes comments on this RFA certification.

We note that this analysis is also applicable under Executive Order 13272; for those purposes as well we certify that this Interim Final Rule does not impose a significant economic impact on a substantial number of small entities.

The Department has also determined that this rule is not a "major rule" for purposes of the Small Business Regulatory Enforcement Fairness Act (SBREFA), 5 U.S.C. Chapter 8. SBREFA requires agencies to take certain actions when a "major rule" is promulgated. SBREFA defines a "major rule" as one that will have an annual effect on the economy of \$100,000,000 or more; that will result in a major increase in costs or prices for, among other things, State or local government agencies; or that will significantly and adversely effect the business climate. For the reasons already discussed, the Department

estimates that the only additional costs to grantees implementing these SCSEP regulations will be \$0.59 per participant. Accordingly, none of the definitions of "major rule" apply in this instance.

#### *Executive Order 12866*

Executive Order 12866 requires that for each "significant regulatory action" proposed by the Department, the Department conduct an assessment of the proposed regulatory action and provide the Office of Management and Budget (OMB) with the proposed regulation and the requisite assessment prior to publishing the regulation. A significant regulatory action is defined to include an action that will have an annual effect on the economy of \$100 million or more, as well as an action that raises a novel legal or policy issue.

The performance measures defined and implemented by this rule will not have an annual effect on the economy of \$100 million or more, for the reasons outlined above, but do raise novel policy issues related to implementing the performance measures required by the 2006 OAA Amendments to the SCSEP. Accordingly, the OMB has reviewed this Interim Final Rule.

#### *Paperwork Reduction Act*

The purposes of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, include minimizing the paperwork burden on effected entities. The PRA requires certain actions before an agency can adopt or revise the collection of information, including publishing a summary of the collection of information and a brief description of the need for and proposed use of the information.

The performance accountability system described in this Interim Final Rule requires grantees to continue to maintain electronic participant records that include the data needed for each performance indicator. Quarterly and annual reports on performance measures are generated using these electronic records. Grantees may use the SPARQ computer system developed by the Department for the SCSEP, or they may maintain their own computer database as long as they are able to electronically provide the necessary data for the quarterly and annual reports. These information gathering activities are required to implement the performance measurement system enacted in the 2006 OAA Amendments, and will promote program effectiveness by providing valuable data on program performance.

The forms used until now by grantees to maintain and report performance

measures data were approved by the OMB and assigned OMB control number 1205-0040. Revised forms that account for the changes in the performance measures described in this Interim Final Rule have been submitted as required by the PRA as modifications to existing forms, using the same control number.

The Department estimates that the public reporting burden for this collection of information is an average of 8.4 minutes per response. Note that this estimate does not represent the total burden on grantees for all SCSEP paperwork, rather it is an estimate of the burden resulting just from the paperwork directly related to the performance measures.

The Department invites comments on its Paperwork Reduction Analysis.

#### *Unfunded Mandates Reform Act*

For purposes of the Unfunded Mandates Reform Act of 1995, this rule does not include any Federal mandate that may result in increased expenditure by State, local, and tribal governments in the aggregate of more than \$100 million, or increased expenditures by the private sector of more than \$100 million.

#### *Executive Order 13132*

The Department has reviewed this rule in accordance with Executive Order 13132 regarding federalism and has determined that it does not have "federalism implications." The rule does not "have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This interim rule defines and implements performance measures for the SCSEP, and while States are SCSEP grantees, this rule merely makes changes to data collection processes that are ongoing. Requiring State grantees to implement these changes does not constitute a "substantial direct effect" on the States, nor will it alter the relationship or responsibilities between the Federal and State governments.

#### *Executive Order 13045*

Executive Order 13045 concerns the protection of children from environmental health risks and safety risks. This rule defines and details the performance measures to be utilized by the SCSEP, a program for older Americans, and has no impact on safety or health risks to children.

#### *Executive Order 13175*

Executive Order 13175 addresses the unique relationship between the Federal

Government and Indian tribal governments. The order requires Federal agencies to take certain actions when regulations have “tribal implications.” Required actions include consulting with Tribal Governments prior to promulgating a regulation with tribal implications and preparing a tribal impact statement. The order defines regulations as having “tribal implications” when they have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

The Department has reviewed this Interim Final Rule and concludes that it does not have tribal implications. While tribes are sub-grantees of national SCSEP grantees, this rule will not have a substantial direct effect on those tribes, because, as outlined in the Regulatory Flexibility section of the preamble, there are only small cost increases associated with implementing this regulation. This regulation does not affect the relationship between the Federal Government and the tribes, nor does it affect the distribution of power and responsibilities between the Federal Government and Tribal Governments.

The Department notes that it did receive a submission from the National Indian Council on Aging (NICOA). However, the NICOA’s comments did not raise concerns about the relationship between the Federal Government and Indian tribes or the distribution of power and responsibilities between the Federal Government and Indian tribes. Instead, the NICOA thoroughly responded to the issues outlined in the notice.

Accordingly we conclude that this rule does not have tribal implications for the purposes of Executive Order 13175.

#### *Environmental Impact Assessment*

The Department has reviewed this rule in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 CFR part 1500), and the Department’s NEPA procedures (29 CFR part 11). The rule will not have a significant impact on the quality of the human environment, and, thus, the Department has not prepared an environmental assessment or an environmental impact statement.

#### *Assessment of Federal Regulations and Policies on Families*

Section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681), requires the Department to assess the impact of this rule on family well-being. A rule that is determined to have a negative affect on families must be supported with an adequate rationale.

The Department has assessed this rule and determines that it will not have a negative effect on families. Indeed, we believe the SCSEP strengthens families by providing job training and support services to low-income older Americans so that they can obtain fruitful employment and enjoy increased economic self-sufficiency.

#### *Privacy Act*

The Privacy Act of 1974, 5 U.S.C. 552a, provides safeguards to individuals concerning their personal information which the Government collects. The Act requires certain actions by an agency that collects information on individuals when that information contains personally identifying information such as Social Security Numbers or names. Because SCSEP participant records are maintained by Social Security Number, the Act applies here.

A key concern is for the protection of participant Social Security Numbers. Grantees must collect the Social Security Number in order to properly pay participants for their community service work in host agencies. When participant files are sent to the Department for aggregation, the transmittal is protected by secure encryption. When participant files are retrieved within the Internet-based SCSEP data management system, or SPARQ, only the last four digits of the Social Security Number are displayed. Any information that is shared or made public is aggregated by grantee and does not reveal personal information on specific individuals.

The Department works diligently to ensure the highest level of security whenever personally identifiable information is stored or transmitted. All contractors that have access to individually identifying information are required to provide assurances that they will respect and protect the confidentiality of the data. ETA’s Office of Performance and Technology has been an active participant in the development and approval of data security measures—especially as they apply to SPARQ.

In addition to the above, a Privacy Act Statement is provided to grantees for distribution to all program participants. The grantees were advised of the requirement in ETA’s Older Worker Bulletin OWB–04–06. Participants receive this information when they meet with a case worker or intake counselor. When the programs are monitored, implementation of this item is included in the review.

#### *Executive Order 12630*

This rule is not subject to Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

#### *Executive Order 12988*

This regulation has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the Federal court system. The regulation has been written so as to minimize litigation and provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

#### *Executive Order 13211*

This rule is not subject to Executive Order 13211, because it will not have a significant adverse effect on the supply, distribution, or use of energy.

#### *Plain Language*

The Department drafted this Interim Final Rule in plain language.

#### *Effective Date and Absence of Notice and Comment*

The Department has, for good cause, determined, in accordance with 5 U.S.C. 553(b)(3)(B), that in order to meet the 2006 OAA Amendments’ requirements for implementation of the SCSEP performance accountability system it is impracticable and contrary to the public interest to promulgate these regulations through the normal notice and comment rulemaking process. In addition, for similar reasons, good cause exists for this rule to take effect immediately upon publication pursuant to 5 U.S.C. 553(d)(3).

The 2006 OAA Amendments call for several specific changes to the existing performance accountability system, and require that DOL establish and implement the new SCSEP performance measures after consultation with stakeholders by July 1, 2007. Specifically, section 513(a)(1) states that “The Secretary shall establish and implement, after consultation with grantees, subgrantees and host agencies

under this title, States, older individuals, area agencies on aging and other organizations serving older individuals, core measures of performance and additional indicators of performance for each grantee for projects and services carried out under this title.” Section 513(d)(4) calls for the Department to establish and implement the core measures and additional indicators of performance identified in the 2006 Amendments “not later than July 1, 2007.” Further, section 513(a)(2)(C) requires that “The Secretary and each grantee shall reach agreement on the expected levels of performance for each program year for each of the core indicators of performance \* \* \*. Funds may not be awarded under the grant until such agreement is reached.” Finally, section 513(b)(3) states that “(t)he Secretary, after consultation with national and State grantees, representatives of business and labor organizations, and providers of services, shall, by regulation, issue definitions of the indicators of performance” described in OAA–2006.

The tasks required to implement the performance accountability section are interconnected and the consequences of failing to achieve them by July 1 are contrary to the public interest. Without regulatory definitions, the Department will likely be unable to reach agreement with grantees on expected levels of performance. Without such agreements, grants may not be awarded. Failure to award grants on time may result in a gap in service during which needy seniors go without the assistance authorized by the Act.

The Department has worked diligently to develop a strategy and achieve the tasks necessary to implement the performance accountability system by the July 1 deadline. For example, we have implemented an interagency group to oversee the strategy for implementation; consulted with stakeholders through a **Federal Register** notice seeking public input on the matters covered by this rule; and we published a Training and Employment Guidance Letter to inform grantees of the anticipated changes to the performance measures. The establishment of the regulatory definitions in this Interim Final Rule is critical to this strategy. In order to carry out this multi-pronged approach, it is not possible to develop and publish a Notice of Proposed Rulemaking followed by a Final Rule in the short period of time available. Therefore, in order to assure that the system is implemented by July 1 and to avoid harmful gaps in service, it is necessary and in the public interest to implement

the regulations through an Interim Final Rule. We are committed to public input in the development of SCSEP regulations, including this Interim Final Rule. We provided an opportunity for input into the development of this regulation; we request and are committed to considering comments on this rule; and we will be implementing the remaining regulations to the SCSEP program through Notice and Comment Rulemaking.

**List of Subjects in 20 CFR Part 641**

Aged, Employment, Government contracts, Grant programs—labor, Reporting and recordkeeping requirements.

■ For the reasons discussed in the preamble, the Department of Labor amends 20 CFR part 641 as follows:

**PART 641—PROVISIONS GOVERNING THE SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM**

■ 1. The authority citation for part 641 continues to read as follows:

**Authority:** 42 U.S.C. 3056 *et seq.*

- 2. Amend § 641.140 to:
  - a. Add in alphabetical order the definitions of “additional indicators,” “at risk for homelessness,” “community service employment,” “core indicators,” “frail,” “homeless,” “limited English proficiency,” “low employment prospects,” “low literacy skills,” “most-in-need,” “persistent unemployment,” “rural,” “severe disability,” “severely limited employment prospects,” and “veteran” as set forth below;
  - b. Revise the definitions of “disability” and “national grantee;” to read as set forth below.

**§ 641.140 What definitions apply to this part?**

\* \* \* \* \*

*Additional indicators* mean retention in unsubsidized employment for one year; and satisfaction of participants, employers and their host agencies with their experiences and the services provided and any other indicators of performance that the Secretary determines to be appropriate to evaluate services and performance. (§ 513(b)(2) as amended by Pub. L. 109–365).

*At risk for homelessness* means an individual is likely to become homeless and the individual lacks the resources and support networks needed to obtain housing.

\* \* \* \* \*

*Community service employment* means part-time, temporary employment paid with grant funds in projects in host agencies through which

eligible individuals are engaged in community service and receive work experience and job skills that can lead to unsubsidized employment. (§ 513(a)(2) as amended by Pub. L. 109–365).

*Core indicators* means hours (in the aggregate) of community service employment; entry into unsubsidized employment; retention in unsubsidized employment for six months; earnings; the number of eligible individuals served; and most-in-need (the number of individuals described in subsection (a)(3)(B)(ii) or (b)(2) of section 518 of the OAA). (§ 513(b)(1) as amended by Pub. L. 109–365).

\* \* \* \* \*

*Disability* means a disability attributable to mental or physical impairment, or a combination of mental and physical impairments, that results in substantial functional limitations in one or more of the following areas of major life activity:

- (1) Self-care;
- (2) Receptive and expressive language;
- (3) Learning;
- (4) Mobility;
- (5) Self-direction;
- (6) Capacity for independent living;
- (7) Economic self-sufficiency;
- (8) Cognitive functioning; and
- (9) Emotional adjustment.

(42 U.S.C. 3002(13)).

\* \* \* \* \*

*Frail* means an individual 55 years of age or older who is determined to be functionally impaired because the individual—

- (1)(i) Is unable to perform at least two activities of daily living without substantial human assistance, including verbal reminding, physical cueing, or supervision; or
- (ii) At the option of the State, is unable to perform at least three such activities without such assistance; or
- (2) Due to a cognitive or other mental impairment, requires substantial supervision because the individual behaves in a manner that poses a serious health or safety hazard to the individual or to another individual.

(42 U.S.C. 3002(22)).

\* \* \* \* \*

*Homeless* includes

- (1) An individual who lacks a fixed, regular, and adequate nighttime residence; and
- (2) An individual who has a primary nighttime residence that is:
  - (i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate

shelters, and transitional housing for the mentally ill);

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodations for human beings.

(42 U.S.C. 11302(a)).

\* \* \* \* \*

*Limited English proficiency* means individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English.

\* \* \* \* \*

*Low employment prospects* means the likelihood that an individual will not obtain employment without the assistance of the SCSEP or another workforce development program. Persons with low employment prospects have a significant barrier to employment. Significant barriers to employment may include but are not limited to: Lacking a substantial employment history, basic skills, and/or English-language proficiency; lacking a high school diploma or the equivalent; having a disability; being homeless; or residing in socially and economically isolated rural or urban areas where employment opportunities are limited.

*Low literacy skills* means the individual computes or solves problems, reads, writes, or speaks at or below the 8th grade level or is unable to compute or solve problems, read, write, or speak at a level necessary to function on the job, in the individual's family, or in society.

*Most-in-need* means participants with one or more of the following characteristics: Have a severe disability; are frail; are age 75 or older; are age-eligible but not receiving benefits under title II of the Social Security Act; reside in an area with persistent unemployment and have severely limited employment prospects; have limited English proficiency; have low literacy skills; have a disability; reside in a rural area; are veterans; have low employment prospects; have failed to find employment after utilizing services provided under title I of the Workforce Investment Act of 1998 (29 U.S.C. 2801 *et seq.*); or are homeless or at risk for homelessness. (Older Americans Act (OAA) section 513(b)(1)(E) as amended by Pub. L. 109–365).

*National grantee* means a public or non-profit private agency or organization, or Tribal organization, that receives a grant under title V of the OAA (42 U.S.C. 3056 *et seq.*) to administer a SCSEP project. (See OAA

section 506(g)(5) as amended by Pub. L. 109–365).

\* \* \* \* \*

*Persistent unemployment* means that the annual average unemployment rate for a county or city is more than 20 percent higher than the national average for two out of the last three years.

\* \* \* \* \*

*Rural* means an area not designated as a metropolitan statistical area by the Census Bureau; segments within metropolitan counties identified by codes 4 through 10 in the Rural Urban Commuting Area (RUCA) system; and RUCA codes 2 and 3 for census tracts that are larger than 400 square miles and have population density of less than 30 people per square mile.

\* \* \* \* \*

*Severe disability* means a severe, chronic disability attributable to mental or physical impairment, or a combination of mental and physical impairments, that—

(1) Is likely to continue indefinitely; and

(2) Results in substantial functional limitation in 3 or more of the following areas of major life activity:

- (i) Self-care;
- (ii) Receptive and expressive language;
- (iii) Learning;
- (iv) Mobility;
- (v) Self-direction;
- (vi) Capacity for independent living;
- (vii) Economic self-sufficiency.

(42 U.S.C. 3002(48)).

*Severely limited employment prospects* means a substantially higher likelihood that an individual will not obtain employment without the assistance of the SCSEP or another workforce development program. Persons with severely limited employment prospects have more than one significant barrier to employment; significant barriers to employment may include but are not limited to: Lacking a substantial employment history, basic skills, and/or English-language proficiency; lacking a high school diploma or the equivalent; having a disability; being homeless; or residing in socially and economically isolated rural or urban areas where employment opportunities are limited.

\* \* \* \* \*

*Veteran* means an individual who is a “covered person” for purposes of the Jobs for Veterans Act, 38 U.S.C. 4215(a)(1).

\* \* \* \* \*

■ 3. Revise Subpart G to read as follows:

## Subpart G—Performance Accountability

Sec.

641.700 What performance measures/indicators apply to SCSEP grantees?

641.710 How are the performance indicators defined?

641.720 How will the Department and grantees initially determine and then adjust expected levels of performance for the core performance measures?

641.730 How will the Department assist grantees in the transition to the new core performance indicators?

641.740 How will the Department determine whether a grantee fails, meets, or exceeds the expected levels of performance for the core indicators and what will be the consequences of failing to meet expected levels of performance?

641.750 Will there be performance-related incentives?

### § 641.700 What performance measures/indicators apply to SCSEP grantees?

(a) *Indicators of performance.* There are currently eight performance measures, of which six are core indicators and two are additional indicators. Core indicators (defined in § 641.710) are subject to goal-setting and corrective action (described in § 641.720); that is, performance level goals for each core indicator must be agreed upon between the Department and each grantee before the start of each program year, and if a grantee fails to meet the performance level goals for the core indicators, that grantee is subject to corrective action. Additional indicators (defined in § 641.710) are not subject to goal-setting and are, therefore, also not subject to corrective action.

(b) *Core Indicators.* Section 513(b)(1) as amended by Pub. L. 109–365 establishes the following core indicators of performance:

- (1) Hours (in the aggregate) of community service employment;
- (2) Entry into unsubsidized employment;
- (3) Retention in unsubsidized employment for six months;
- (4) Earnings;
- (5) The number of eligible individuals served; and
- (6) The number of most-in-need individuals served (the number of participating individuals described in subsection (a)(3)(B)(ii) or (b)(2) of section 518).

(c) *Additional Indicators.* Section 513(b)(2) as amended by Pub. L. 109–365 establishes the following additional indicators of performance:

- (1) Retention in unsubsidized employment for one year; and
- (2) Satisfaction of the participants, employers, and their host agencies with their experiences and the services provided.

(3) Any other indicators of performance that the Secretary determines to be appropriate to evaluate services and performance.

(d) *Affected entities.* The core indicators of performance and additional indicators of performance are applicable to each grantee without regard to whether such grantee operates the program directly or through sub-contracts, sub-grants, or agreements with other entities. Grantees must assure that their sub-grantees and lower-tier sub-grantees are collecting and reporting program data.

(e) *Required evaluation and reporting.* An agreement to be evaluated on the core indicators of performance and to report information on the additional indicators of performance is a requirement for application for, and is a condition of, all SCSEP grants.

**§ 641.710 How are the performance indicators defined?**

(a) The core indicators are defined as follows:

(1) "Hours of community service employment" is defined as the total number of hours of community service provided by SCSEP participants divided by the number of hours of community service funded by the grantee's grant, after adjusting for differences in minimum wage among the States and areas. Paid training hours are excluded from this measure.

(2) "Entry into unsubsidized employment" is defined by the formula: Of those who are not employed at the date of participation: The number of participants who are employed in the first quarter after the exit quarter divided by the number of adult participants who exit during the quarter.

(3) "Retention in unsubsidized employment for six months" is defined by the formula: Of those who are employed in the first quarter after the exit quarter: The number of adult participants who are employed in both the second and third quarters after the exit quarter divided by the number of adult participants who exit during the quarter.

(4) "Earnings" is defined by the formula: Of those participants who are employed in the first, second and third quarters after the exit quarter: Total earnings in the second quarter plus total earnings in the third quarter after the exit quarter divided by the number of participants who exit during the quarter.

(5) "The number of eligible individuals served" is defined as the total number of participants served divided by a grantee's authorized number of positions, after adjusting for

differences in minimum wage among the States and areas.

(6) "Most-in-need" or "the number of participating individuals described in subsection (a)(3)(B)(ii) or (b)(2) of section 518" is defined by counting the total number of the following characteristics for all participants and dividing by the number of participants served. Participants are characterized as most-in-need if they:

- (i) Have a severe disability;
- (ii) Are frail;
- (iii) Are age 75 or older;
- (iv) Meet the eligibility requirements related to age for, but do not receive, benefits under Title II of the Social Security Act (42 U.S.C. 401 *et seq.*);
- (v) Live in an area with persistent unemployment and are individuals with severely limited employment prospects;
- (vi) Have limited English proficiency;
- (vii) Have low literacy skills;
- (viii) Have a disability;
- (ix) Reside in a rural area;
- (x) Are veterans;
- (xi) Have low employment prospects;
- (xii) Have failed to find employment after utilizing services provided under title I of the Workforce Investment Act of 1998 (29 U.S.C. 2801 *et seq.*); or
- (xiii) Are homeless or at risk for homelessness.

(b) The additional indicators are defined as follows:

(1) "Retention in unsubsidized employment for 1 year" is defined by the formula: of those who are employed in the first quarter after the exit quarter: The number of participants who are employed in the fourth quarter after the exit quarter divided by the number of participants who exit during the quarter.

(2) "Satisfaction of the participants, employers, and their host agencies with their experiences and the services provided" is defined as the results of customer satisfaction surveys administered to each of these three customer groups. The Department will prescribe the content of the surveys.

**§ 641.720 How will the Department and grantees initially determine and then adjust expected levels of performance for the core performance measures?**

(a) *Initial agreement.* Before the beginning of each Program Year, the Department and each grantee will undertake to agree upon expected levels of performance for each core indicator, except as provided in paragraph (b) of § 641.730.

(1) As a first step in this process, the Department proposes a baseline performance level for each core indicator, taking into account any statutory performance requirements, the need to promote continuous

improvement in the program overall and in each grantee, the grantee's past performance, and the statutory adjustment factors articulated in paragraph (b) of this section.

(2) A grantee may request a revision to the Department's initial performance level goal determination. The request must be based on data that supports the revision request. The data supplied by the grantee at this stage may concern the statutory adjustment factors articulated in paragraph (b) of this section, but is not limited to those factors; it is permissible for a grantee to supply data on "other appropriate factors as determined by the Secretary." Section 513(a)(2)(C) as amended by Pub. L. 109-365.

(3) The Department may revise the performance level goal in response to the data provided. The Department then sets the expected levels of performance for the core indicators. Grantee may agree to the expected level of performance and thereby receive the grant. At this point, agreement is reached by the parties and funds may be awarded. If a grantee does not agree with the offered expected level of performance, agreement is not reached and no funds may be awarded. A grantee may submit comments to the Department regarding the grantee's satisfaction with the expected levels of performance.

(4) Funds may not be awarded under the grant until such agreement is reached.

(5) At the conclusion of negotiations concerning the performance levels with all grantees, the Department will make available for public review the final negotiated expected levels of performance for each grantee, including any comments submitted by the grantee regarding the grantee's satisfaction with the negotiated levels.

(6) The minimum percentage for the expected level of performance for the entry into unsubsidized employment core indicator is:

- (i) 21 percent for Program Year 2007;
- (ii) 22 percent for Program Year 2008;
- (iii) 23 percent for Program Year 2009;
- (iv) 24 percent for Program Year 2010;

and

(v) 25 percent for Program Year 2011.  
(b) *Adjustment during the Program Year.* After the Department and grantees reach agreement on the core indicator levels, those levels may only be revised in response to a request from a grantee based on data supporting one or more of the following statutory adjustment factors:

(1) High rates of unemployment or of poverty or of participation in the program of block grants to States for

temporary assistance for needy families established under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*), in the areas served by a grantee, relative to other areas of the State involved or Nation.

(2) Significant downturns in the areas served by the grantee or in the national economy.

(3) Significant numbers or proportions of participants with one or more barriers to employment, including individuals described in subsection (a)(3)(B)(ii) or (b)(2) of section 518 as amended by Pub. L. 109-365 (most-in-need), served by a grantee relative to such numbers or proportions for grantees serving other areas of the State or Nation.

(4) Changes in Federal, State, or local minimum wage requirements.

(5) Limited economies of scale for the provision of community service employment and other authorized activities in the areas served by the grantee.

**§ 641.730 How will the Department assist grantees in the transition to the new core performance indicators?**

(a) *General transition provision.* As soon as practicable after July 1, 2007, the Department will determine if an SCSEP grantee has, for Program Year 2006, met the expected levels of performance for the Program Year 2007. If the Department determines that the grantee failed to meet Program Year 2007 goals in Program Year 2006, the Department will provide technical assistance to help the grantee meet those expected levels of performance in Program Year 2007.

(b) *Exception for most-in-need for Program Year 2007.* Because the 2006 OAA Amendments expanded the list of most-in-need characteristics neither the Department nor the grantees have sufficient data to set a goal for measuring performance. Accordingly, Program Year 2007 will be treated as a baseline year for the most-in-need indicator so that the grantees and the Department may collect sufficient data to set a meaningful goal for this measure for Program Year 2008.

**§ 641.740 How will the Department determine whether a grantee fails, meets, or exceeds the expected levels of performance for the core indicators and what will be the consequences of failing to meet expected levels of performance?**

(a) *Aggregate Calculation of Performance.* Not later than 120 days after the end of each Program Year, the Department will determine if a national grantee has met the expected levels of performance (including any adjustments to such levels) by aggregating the grantee's core indicators. The aggregate is calculated by combining the percentage of goal achieved on each of the individual core indicators to obtain an average score. A grantee will fail to meet its performance measures when it is does not meet 80 percent of the agreed-upon level of performance for the aggregate of all the core indicators. Performance in the range of 80 to 100 percent constitutes meeting the level for the core performance measures. Performance in excess of 100 percent constitutes exceeding the level for the core performance measures.

(b) *Consequences—(1) National grantees.* (i) If the Department determines that a national grantee fails to meet the expected levels of performance in a Program Year, the Department, after each year of such failure, will provide technical assistance and will require such grantee to submit a corrective action plan not later than 160 days after the end of the Program Year.

(ii) The corrective action plan must detail the steps the grantee will take to meet the expected levels of performance in the next Program Year.

(iii) Any national grantee that has failed to meet the expected levels of performance for 4 consecutive years (beginning with Program Year 2007) will not be allowed to compete in the subsequent grant competition, but may compete in the next grant competition after that subsequent competition.

(2) *State Grantees.* (i) If the Department determines that a State fails to meet the expected levels of performance, the Department, after each year of such failure, will provide

technical assistance and will require the State to submit a corrective action plan not later than 160 days after the end of the Program Year.

(ii) The corrective action plan must detail the steps the State will take to meet the expected levels of performance in the next Program Year.

(iii) If the Department determines that the State fails to meet the expected levels of performance for 3 consecutive Program Years (beginning with Program Year 2007), the Department will require the State to conduct a competition to award the funds allotted to the State under section 506(e) of the OAA for the first full Program Year following the Department's determination. The new grantee will be responsible for administering the SCSEP in the State and will be subject to the same requirements and responsibilities as had been the State grantee.

(c) *Evaluation.* The Department will annually evaluate, publish and make available for public review, information on the actual performance of each grantee with respect to the levels achieved for each of the core indicators of performance, compared to the expected levels of performance, and the actual performance of each grantee with respect to the levels achieved for each of the additional indicators of performance. The results of the Department's annual evaluation will be reported to Congress.

**§ 641.750 Will there be performance-related incentives?**

The Department is authorized by sections 502(e)(2)(B)(iv) and 517(c)(1) as amended by Pub. L. 109-365 to use recaptured SCSEP funds to provide incentive awards. The Department will exercise this authority at its discretion.

Signed at Washington, DC, this 25th day of June, 2007.

**Emily Stover DeRocco,**

*Assistant Secretary for Employment and Training.*

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