

Employment and Training Administration, Labor

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Subpart A—Introduction

§ 632.1 [Reserved]

§ 632.2 Scope and purpose.

It is the purpose of Native American programs to provide job training and employment activities consistent with the intent of title IV, part A, section

401. Such programs shall be administered in such a manner as to maximize the Federal commitment to support growth and development as determined by representatives of the communities and groups served by this section including furtherance of the policy of Indian Self-Determination.

§ 632.3 Format for these regulations.

Regulations promulgated by the Department of Labor to implement the provisions of title IV, section 401 and Indian programs under title II-B of the Act are set forth in 20 CFR part 632. This part in conjunction with part 636 contains all the regulations under the Act applicable to Indian and Native American programs.

§ 632.4 Definitions.

Act—means the Job Training Partnership Act (29 U.S.C. section 1501 *et seq.*).

Capital improvement—means any modification, addition, restoration or other improvement:

(a) Which increases the usefulness, productivity, or serviceable life of an existing building, structure, or major item of equipment;

(b) Which is classified for accounting purposes as a “fixed asset;” and

(c) The cost of which increases the recorded value of the existing building, structure, or major item of equipment and is subject to depreciation.

Community based organization—means a private nonprofit organization which is representative of the Indian and Native American community or significant segments of the community and which provides employment and training services or activities.

Comprehensive Annual Plan (CAP)—means the annual update to the Master Plan. The CAP will identify the work plan and budget for the annual 401 and title II, part B funding allocations.

Construction—means the erection, installation, assembly or painting of a new structure or a major addition, expansion or extension of an existing structure and the related site preparation, excavation, filling and landscaping or other land improvements.

Contract—means a procurement instrument, other than a grant, by which the Department, a Native American

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grantee or a subgrantee acquires and pays for property, services, supplies, materials or equipment.

Contractor—means any person, corporation, partnership, public agency, or other entity which enters into a contract with the DOL, a Native American grantee or subgrantee under the Act.

Department—means the United States Department of Labor (DOL) including its agencies and organizational units.

Dependent—means any person for whom, both currently and during the previous 12 months, the participant has assumed 50 percent of the person's support.

DINAP—means the Division of Indian and Native American Programs of the Department of Labor.

DOL—means the U.S. Department of Labor.

Economically disadvantaged—means an individual who

(a) Receives, or is a member of a family which receives, cash welfare payments under a Federal, State, or local welfare program;

(b) Has, or is a member of a family which has, received a total family income for the six-month period prior to application for the program involved (exclusive of unemployment compensation, child support payments, and welfare payments) which, in relation to family size, was not in excess of the higher of

(1) The poverty level determined in accordance with criteria established by the Department of Health and Human Services, or

(2) 70 percent of the lower living standard income level;

(c) Is receiving food stamps pursuant to the Food Stamp Act of 1977;

(d) Is a foster child on behalf of whom State or local government payments are made; or

(e) Is a handicapped individual whose own income meets the requirements of paragraph (a) or (b) of this definition, but who is a member of a family whose income does not meet such requirements.

Entered employment—means the act of securing unsubsidized employment for or by a participant.

Entry level—means the lowest position in any promotional line, as defined

locally by collective bargaining agreements, past practice, or applicable personnel rules.

Family—means (a) One or more persons living in a single residence who are related to each other by blood, marriage, or adoption. A step-child or a step-parent is considered to be related by marriage.

(b)(1) For purposes of paragraph (a) of this definition, one or more persons not living in the single residence but who are claimed as a dependent on another person's Federal Income Tax return for the previous year is presumed, unless otherwise demonstrated, to be part of the other person's family.

(2) A handicapped individual may be considered a family of one when applying for programs under the Act.

(3) An individual 18 years of age or older, except as provided in (b) (1) or (2) of this definition, who receives less than 50 percent of support from the family, and who is not the principal earner nor the spouse of the principal earner shall not be considered a member of the family. Such an individual shall be considered a family of one.

Family income—means all income actually received from all sources by all members of the family for the six-month period prior to application. Family size is the maximum number of family members during the six-month period prior to application. When computing family income, income of a spouse and other family members is counted for the portion of the six-month period prior to application that the person was actually a part of the family unit.

(a) For the purposes of determining participant eligibility (and not for grantee allocations), family income includes:

(1) Gross wages, including CSE, Work Experience and OJT paid from JTPA funds, and salaries (before deductions);

(2) Net self-employment income (gross receipts minus operating expenses); and

(3) Other money income received from sources such as interest, net rents, OASI (Old Age and Survivors Insurance) social security benefits, pensions, alimony, and periodic income from insurance policy annuities, and other sources of income.

(b) Family income does not include:

(1) Non-cash income such as food stamps, or compensation received in the form of food or housing;

(2) Imputed value of owner-occupied property, *i.e.*, rental value;

(3) Public assistance payments;

(4) Cash payments received pursuant to a State plan approved under titles I, IV, X or XVI of the Social Security Act, or disability insurance payments received under title II of the Social Security Act;

(5) Federal, State or local unemployment benefits;

(6) Capital gains and losses;

(7) One time unearned income, such as, but not limited to:

(i) Payments received for a limited fixed term under income maintenance programs and supplemental (private) unemployment benefits plans;

(ii) One-time or fixed-term scholarship and fellowship grants;

(iii) Accident, health, and casualty insurance proceeds;

(iv) Disability and death payments, including fixed term (but not lifetime) life insurance annuities and death benefits;

(v) One-time awards and gifts;

(vi) Inheritance, including fixed term annuities;

(vii) Fixed term workers' compensation awards;

(viii) Terminal leave pay;

(ix) Soil bank payments; and

(x) Agriculture crop stabilization payments;

(8) Pay or allowances which were previously received by any veteran while serving on active duty in the Armed Forces;

(9) Educational assistance and compensation payments to veterans and other eligible persons under chapters 11, 13, 31, 34, 35, and 36, of title 38, United States Code;

(10) Payments received under the Trade Act of 1974;

(11) Black Lung payments received under the Benefits Reform Act of 1977, Pub. L. 95-239, 30 U.S.C. 901;

(12) Child support payments; and

(13) Any income directly or indirectly derived from, or arising out of, any property held by the United States in trust for any Indian tribe, band or group or any individual; per capita

payments; and services, compensation or funds provided by the United States in accordance with, or generated by, the exercise of any right guaranteed or protected by treaty; and any property distributed or income derived therefrom, or any amounts paid to or for any individual member, or distributed to or for the legatees or next of kin of any member, derived from or arising out of the settlement of an Indian claim.

Financial assistance—means any grant, loan, or any other arrangement by which the Department or Native American grantee provides or otherwise makes available assistance in the form of:

(a) Funds;

(b) Services of Federal or Native American grantee personnel; or

(c) Real and personal property or any interest in or use of such property, including:

(1) Transfers or leases of such property for less than fair market value or for reduced consideration and

(2) Proceeds from a subsequent transfer or lease of such property if the Federal or Native American grantee share of its fair market value is not returned to the Federal Government or Native American grantee.

Governing body—means a body consisting of duly elected or designated representatives, a body appointed by duly elected officials, or a body selected in accordance with traditional tribal means which has the authority to provide services to, and to enter into contracts, agreements and grants under this part on behalf of the organization or individuals who elected or designated them, elected the appointing official, or recognize the body selected in accordance with traditional tribal means.

Governor—means the chief executive of any State.

Handicapped individual—means any individual who has a physical or mental disability which for such individual constitutes or results in a substantial handicap to employment.

Hawaiian Native—means any individual, any of whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii (Sec. 3(12)).

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JTPA—means the Job Training Partnership Act.

Local Educational Agency (LEA)—means such an agency as defined in section 195(10) of the Vocational Educational Act of 1963. It shall further mean the governing bodies of any Bureau of Indian Affairs, tribal or reservation run agencies or school districts, or any nonprofit agency or tribally chartered entity providing educational services to Indian and Native American persons as determined by the Native American grantee.

Low Income Housing—means: (a) For weatherization or winterization projects, those dwellings occupied by persons whose family income does not exceed 125 percent of the poverty level and which are:

- (1) Owned by the occupant;
- (2) Publicly owned;
- (3) Owned by a private nonprofit organization;
- (4) Cooperatively owned; or
- (5) For projects funded and approved by the Federal Energy Administration, privately owned rental housing.

(b) For rehabilitation as part of community revitalization or stabilization, housing built or improved with the assistance of Federal, State or tribal programs, and those dwellings occupied by persons whose family income does not exceed 80 percent of the median income for the area, in accordance with section 8(f)(1) of the United States Housing Act of 1937 (42 U.S.C. 1437f) and which are:

- (1) Owned by the occupant;
- (2) Publicly owned;
- (3) Owned by a private nonprofit organization; or
- (4) Cooperatively owned.

Lower living standard income level—means that income level (adjusted for regional, metropolitan, urban, and rural differences and family size) determined annually by the Secretary based on the most recent “lower living family budget” issued by the Secretary.

Master plan—means the basic long term agreement between the Department and the Native American grantee. The master plan contains all basic eligibility determination and administrative information.

Native American community benefit—means the outcome of allowable activities undertaken for the advancement of

economic and social development in the Indian, Alaskan Native, and Hawaiian Native communities consistent with their goals and life styles as determined by representatives of the community.

Offender—means any adult or juvenile who is or has been subject to any stage of the criminal justice process for whom services under this part may be beneficial or who requires assistance in overcoming artificial barriers to employment resulting from a record of arrest or conviction.

Older worker—means a person who is 55 years of age or older.

Participant—means an individual who has:

- (a) Been determined eligible for participation; and
- (b) Started receiving employment, training or services (except post-termination services) funded under the Act, within 45 days of such determination.

Poverty level—means the annual income level at or below which families are considered to live in poverty, as annually determined by the Department of Health and Human Services.

Program income—means net income earned from grant or agreement supported activities. Such earnings include but are not limited to: income from service fees, sale of commodities, usage or rental fees, and royalties on patents or copyrights.

Program year—means that 12-month period of time during which job training activities and services and provided to participants.

Public assistance—means Federal, State, tribal, or local government cash payments for which eligibility is determined by a need or income test.

Secretary—means the Secretary of Labor.

Similarly employed—means that status of a person who is working for the same employer as the JTPA participant, is doing the same type of work, and is similarly classified with respect to employment status (e.g., full-time, permanent, or temporary).

State—means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Marianas Islands, American Samoa, and the Trust Territory of the Pacific Islands.

State Employment Security Agency (SESA)—means the State agency which exercises control over the Unemployment Insurance Service and the Employment Service.

Subgrantee—means any person, corporation, partnership, public agency, or other entity, excluding private for profits concerns, which enters into a grant with the Native American Grantee.

Underemployed persons—means:

- (a) Persons who are working part-time but seeking full-time work; or
- (b) Persons who are working full-time but whose current annualized wage rate (for a family of one), or whose family's current annualized income, is not in excess of:
 - (1) The poverty level, or
 - (2) 70 percent of the lower living standard income level.

Unemployed persons—means individuals who are without jobs and who want and are available for work. The determination of whether individuals are without jobs shall be made in accordance with the criteria used by the Bureau of Labor Statistics of the Department of Labor in defining individuals as unemployed.

Subpart B—Designation Procedures for Native American Grantees

§ 632.10 Eligibility requirements for designation as a Native American grantee.

(a) All funds specifically identified in the Act as reserved for the benefit of Indian and Native American participants shall be disbursed by the Department only to Native American grantees designated pursuant to this subpart. Except for FY 1984, designation will be for a period of two years.

(b) To be designated as a Native American grantee, an applicant must have:

- (1) A governing body;
- (2) For new grantees, an Indian or Native American population within its designated service area of at least 1,000 persons;
- (3) The capability to administer an Indian and Native American employment and training program. For purposes of this paragraph, "capability to

administer" means that the applicant can demonstrate that it possesses, or can acquire the managerial, technical, or administrative staff with the ability to properly administer government funds, develop employment and training opportunities, evaluate program performance and comply with the provisions of the Act and the regulations. In judging the applicant's request for designation, consideration shall be given to factors such as:

(i) Previous experience in operating an effective employment and training program serving Indians or Native Americans;

(ii) The number and kind of activities of similar magnitude and complexity that the applicant has successfully completed;

(iii) Information from other Federal agencies regarding program performance or financial and management capability.

(c) The Department will not designate an organization in cases where it is established that:

(1) The agency's efforts to recover debts (for which three demand letters have been sent) established by final agency action have been unsuccessful, or

(2) Fraud or criminal activity has been proven to exist within the organization, or

(3) The amount under the funding formulas will not total at least \$120,000 in all JTPA funds for the first year of the two-year designation period. In the event that this amount cannot be determined at the time of the Department's decision on the request for designation, the amount shall be estimated in part by reference to the funding levels for Native American programs for the prior fiscal or program year. An applicant for designation shall be designated notwithstanding the limitation in this paragraph of this subsection if it demonstrates that:

(i) It has or expects to receive a combined total of \$120,000 in funds or services for the first year of the 2-year designation period from JTPA and other human resource development programs, including but not limited to those providing for employment, education, vocational education, health, social or similar services; or