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judged against these standards, will not be used for grantee designation purposes for the Program Years 1985–1986. Performance results will be a factor in grantee designations for Program Years 1987–1988, and beyond.

Subpart F—Prevention of Fraud and Program Abuse

§ 632.115 General.

(a) To ensure the integrity of the JTPA programs special efforts by grantees are necessary to prevent fraud and other program abuses. While any violation of the Act or regulations may constitute fraud or program abuse, this subpart F identifies and addresses those specific program problems of most concern to the Department.

(b) This subpart sets forth specific responsibilities of Native American grantees, subgrantees and contractors and of the Secretary to prevent fraud and program abuse in JTPA programs.

§ 632.116 Conflict of interest.

(a) No member of any advisory, planning, private industry council or governing body under the Act shall cast a vote on any matter which has a direct bearing on services to be provided by that member or any organization which such member directly represents or on any matter which would financially benefit such member or any organization such member represents.

(b) Each Native American grantee, subgrantee or contractor shall avoid personal and organizational conflict of interest in awarding financial assistance and in the conduct of procurement activities involving funds under the Act in accordance with the code of conduct requirements set forth in 41 CFR 29-70.216-4.

(c) Neither the Secretary nor any Native American grantee, subgrantee or contractor shall pay funds under the Act to any nongovernmental individual, institution or organization to conduct an evaluation of any program under the Act if such individual, institution or organization is associated with that program as a consultant or technical advisor.

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§ 632.117 Kickbacks.

No officer, employee or agent of any Native American grantee, subgrantee of contractor shall solicit or accept gratuities, favors or anything of monetary value from any actual or potential subgrantee, contractor or supplier.

§ 632.118 Nepotism.

(a) No Native American grantee, subgrantee, contractor or employing agency shall permit the hiring of any person in a staff position or as a participant if that person or a member of that person's immediate family is employed in an administrative capacity by the Native American grantee, subgrantee or contractor. The Native American grantee may waive this requirement if adequate justification is documented. The following are examples where the nepotism provision may be waived:

(1) If there are no other persons eligible and available for participation or employment by the Native American grantee;

(2) Where the Native American grantee's total service population is 2,000 or less, or where the geographical situation of an Indian or Native American community is rural and isolated from other communities within the designated service area; or

(3) Where the potential participant has a history of unemployment or dependence on public assistance.

(b) A Native American grantee may develop its own nepotism policy in lieu of the policy in paragraph (a) of this section. The Chief, DINAP, shall review any such policy before its implementation and shall approve or disapprove it. Any such policy shall be described in the Master Plan and have adequate safeguards to prevent persons employed in an administrative capacity for the Native American grantee, its subgrantees or contractors from using such position to secure JTPA services or other benefits for a member of his or her immediate family. A satisfactory policy shall include the following minimum criteria:

(1) All formal personnel procedures shall be followed;

(2) There shall be full written disclosure to the governing body describing

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all advantages, conflicts and/or disadvantages which may result from the specific personnel action; and

(3) No member of the immediate family of the applicant shall participate in the applicant's selection.

(c) For purposes of this section, the term "immediate family" means wife, husband, son, daughter, mother, father, brother, and sister. The term "staff position" includes all JTPA staff positions funded under the Act such as instructors, counselors, and other staff involved in administrative, training or service activities. The term "employed in an administrative capacity" includes those persons who have overall administrative responsibility for a program including: All elected and appointed officials who have any responsibility for the obtaining of or approval of any grant funded under this part as well as other officials who have any influence or control over the administration of the program, such as the project director, deputy director and unit chiefs; and persons who have selection, hiring, placement or supervisory responsibilities for participants in a Native American employment and training program. The term excludes officials of entities belonging to a consortium who are not at the same time officials of the consortium. Persons serving on a Native American grantee's advisory councils or PIC shall not be considered to be in an administrative capacity.

§ 632.119 Political patronage.

(a) No Native American grantee, sub-grantee or contractor may select, reject, or promote a participant based on that individual's political affiliation or beliefs. The selection or advance of employees as a reward for political services or as a form of political patronage, whether or not the political service or patronage is partisan in nature, is prohibited.

(b) There shall be no selection of sub-grantees or contractors based on political affiliation.

§ 632.120 Political activities.

(a) No program under the Act may involve political activities.

(b) No participant may engage in partisan or nonpartisan political activities

during hours for which the participant is paid with JTPA funds.

(c) No participant may, at any time, engage in partisan or nonpartisan political activities in which such participant represents himself or herself as a spokesperson for the JTPA program.

§ 632.121 Lobbying activities.

No funds provided under the Act may be used in any way:

(a) To attempt to influence in any manner a member of Congress to favor or oppose any legislative or appropriation by Congress; or

(b) To attempt to influence in any manner State or local legislators to favor or oppose any legislation or appropriation by such legislators.

§ 632.122 Unionization and antiunionization activities; work stoppages.

(a) No funds under the Act shall be used in any way to either promote or oppose unionization (sec. 143(c)(1)).

(b) No participant in work experience or community service employment may be placed into, or remain working in, any position which is affected by labor disputes involving a work stoppage. If such a work stoppage occurs during the grant period, participants in affected positions must:

(1) Be relocated to positions not affected by the dispute; or

(2) Be suspended through administrative leave or other means; or

(3) Where participants belong to the labor union involved in the work stoppage, they shall be treated in the same manner as other members of the union except that they may not remain in the affected positions. The grantee shall make every effort to relocate participants who wish to remain working into suitable positions unaffected by the work stoppage.

(c) No person shall be referred to or placed in an on-the-job training position affected by a labor dispute involving a work stoppage and no payments may be made to employers for the training and employment of participants in on-the-job training during the periods of work stoppage.

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§ 632.123 Maintenance of effort.

(a) Funds provided under this Act shall only be used for activities which are in addition to those which would otherwise be available in the area in the absence of such funds.

(b) Funds provided under this Act shall not be used to duplicate facilities or services available in the area (with or without reimbursement) from Federal, State, or local sources, unless the plan establishes that alternative services or facilities would be more effective or more likely to achieve performance goals.

§ 632.124 Theft or embezzlement from employment and training funds; improper inducement; obstruction of investigations and other criminal provisions.

The criminal provision of 18 U.S.C. 665 states:

(a) Whoever, being an officer, director, agent or employee of, or connected in any capacity with, any agency receiving financial assistance under the JTPA knowingly hires an ineligible individual or individuals; embezzles, willfully misapplies, steals, or obtains by fraud any of the money, funds, assets, or property which are the subject of a grant or contract of assistance pursuant to such Act shall be fined not more than \$10,000 or imprisoned for not more than 2 years, or both; but if the amount so embezzled, misapplied, stolen, or obtained by fraud does not exceed \$100, such person shall be fined not more than \$1,000 or imprisoned not more than 1 year, or both.

(b) Any person who willfully obstructs or impedes, or endeavors to obstruct or impede, an investigation or inquiry under the JTPA or the regulations thereunder, shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than 1 year, or by both such fine and imprisonment.

(c) In addition to the criminal provisions set forth in paragraphs (a) and (b) of this section, individuals may be held criminally liable under other Federal laws. For example, 18 U.S.C. sections 600 and 601 hold them liable if they:

(1) Directly or indirectly promise any employment position, compensation, contract, appointment, or other benefit, provided for or made possible in

whole or in part by funds under the Act, or any special consideration in obtaining any such benefit, to any person as consideration, favor, or regard for any political activity or for the support of, or opposition to, any candidate or any political party in connection with any general or special election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office (18 U.S.C. 600); or

(2) Directly or indirectly knowingly cause or attempt to cause any person to make a contribution of a thing of value (including services) for the benefit of any candidate or any political party, by means of the denial or deprivation, or the threat of the denial or deprivation, of any employment or benefits funded under the Act (18 U.S.C. 601).

§ 632.125 Responsibilities of Native American grantees, subgrantees and contractors for preventing fraud and program abuse and for general program management.

(a) Each Native American grantee shall establish and use internal program management procedures sufficient to prevent fraud and program abuse, including subgrantee and contractor fraud and abuse. The procedures to be used shall be identified in the Native American grantee's Master Plan.

(b) Each Native American grantee, subgrantee and contractor shall ensure that sufficient, auditable, and otherwise adequate records are maintained which support the expenditure of all funds under the Act. Such records shall be sufficient to allow the Secretary to audit and monitor the Native American grantees', subgrantees', and contractors' programs and shall include the maintenance of a management information system in accordance with the requirements of § 632.32.

(c) Any person having knowledge of fraud, criminal activity or other abuse shall report such information directly and immediately to the Secretary. Similarly, all complaints involving such matters should also be reported to the Secretary directly and immediately.