

administrative hearings convened to resolve JS-related complaints pursuant to subpart E of part 658 of this chapter.

Supportive services means services other than employment or training that are needed to enable individuals to obtain or retain employment, or to participate in employment and training programs.

Tests means a standardized method of measuring an individual's possession of, interest in, or ability to acquire, job skills and knowledge. Use of tests by employment service staff must be in accordance with the provisions of:

(1) 41 CFR part 60-3, *Uniform Guidelines on Employee Selection Procedures*;

(2) 29 CFR part 1627, *Records To Be Made or Kept Relating to Age; Notices To Be Posted; Administrative Exemptions*; and

(3) The Department of Labor's regulations on Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance, which have been published as 29 CFR part 32 at 45 FR 66706 (Oct. 7, 1980).

Training means a planned, systematic sequence of instruction or other learning experience on an individual or group basis under competent supervision, which is designed to impart skills, knowledge, or abilities to prepare individuals for employment.

Transaction means a single ES activity performed on behalf of an individual seeking assistance and/or the result of such an activity, e.g., applicant registration referral to a job, referral to a supportive service, counseling interview, testing, job development, job placement, enrollment in training, and inactivation of an applicant registration.

United States Employment Service (USES) means the component of the Employment and Training Administration of DOL which was established under the Wagner-Peyser Act of 1933 to promote and develop a national system of public job service offices.

Vocational Plan means a plan developed jointly by a counselor or counselor trainee and the applicant which describes: (1) The applicant's short-range and long-range occupational goals and (2) the actions to be taken to place the plan into effect.

Work Incentive Program (WIN) means the employment and training program under part C of title IV of the Social Security Act, administered by a State agency (such as the State employment service) or another public or nonprofit private agency.

(Wagner-Peyser Act of 1933, as amended, 29 U.S.C. 49 et seq.; 5 U.S.C. 301; and 38 U.S.C. chapters 41 and 42)

[45 FR 39457, June 10, 1980. Redesignated and amended at 7767 and 7768, Jan. 23, 1981]

PART 652—ESTABLISHMENT AND FUNCTIONING OF STATE EMPLOYMENT SERVICES

Subpart A—Employment Service Planning and Operations

Sec.

652.1 Introduction and definitions.

652.2 Scope and purpose of the employment service system.

652.3 Basic labor exchange system.

652.4 Allotment of funds and grant agreement.

652.5 Services authorized.

652.6 State planning process and plan.

652.7 Review and approval of plans.

652.8 Administrative provisions.

652.9 Labor disputes.

Subpart B—Services for Veterans

652.100 Services for veterans.

AUTHORITY: 29 U.S.C. 49k; 38 U.S.C. chapters 41 and 42.

Subpart A—Employment Service Planning and Operations

SOURCE: 48 FR 50665, Nov. 2, 1983, unless otherwise noted.

§ 652.1 Introduction and definitions.

(a) These regulations implement the provisions of the Wagner-Peyser Act, as amended by the Job Training Partnership Act (JTPA), known hereafter as the Act. Congress intended that the States exercise broad authority in implementing the provisions of the Act.

(b) Except as otherwise provided the definitions contained in section 2 of the Act apply to these regulations.

Act means the Wagner-Peyser Act (29 U.S.C. 49 et seq.).

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

Director means the chief official of the United States Employment Service.

Governor means the chief executive of any State.

JTPA means the Job Training Partnership Act of 1982 (29 U.S.C. 1501 *et seq.*).

State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam.

State agency means the State governmental unit designated pursuant to section 4 of the Act to cooperate with the United States Employment Service in the operation of the public employment service system.

State Job Training Coordinating Council (SJTCC) means the entity within a State appointed by the Governor under section 122 of the Job Training Partnership Act which reviews and certifies the employment service plan.

§ 652.2 Scope and purpose of the employment service system.

The basic purpose of the employment service system is to improve the functioning of the nation's labor markets by bringing together individuals who are seeking employment and employers who are seeking workers.

§ 652.3 Basic labor exchange system.

At a minimum, each State shall administer a labor exchange system which has the capacity:

- (a) To assist jobseekers in finding employment;
- (b) To assist employers in filling jobs;
- (c) To facilitate the match between jobseekers and employers;
- (d) To participate in a system for clearing labor between the States, including the use of standardized classification systems issued by the Secretary pursuant to JTPA section 462(c)(3); and
- (e) To meet the work test requirements of the State unemployment compensation system.

§ 652.4 Allotment of funds and grant agreement.

(a) *Allotments.* The Secretary shall provide planning estimates in accordance with section 6(b)(5) of the Act. Within 30 days of receipt of planning estimates from the Secretary, the State shall make public the substate resource distributions, and describe the process and schedule under which these resources will be issued, planned and committed. This notification shall include a description of the procedures by which the public may review and comment on the substate distributions, including a process by which the State will resolve any complaints.

(b) *Grant Agreement.* To establish a continuing relationship under the Act, the Governor and the Secretary shall sign a Governor/Secretary Agreement, including a statement assuring that the State shall comply with the Act and all applicable rules and regulations. Consistent with this Agreement and section 6 of the Act, State allotments will be obligated through a Notification of Obligation.

(Approved by the Office of Management and Budget under control number 1205-0209)

§ 652.5 Services authorized.

The sums allotted to each State pursuant to section 6 of the Act shall be expended consistent with an approved plan pursuant to § 652.7 of these regulations. At a minimum, each State shall provide the basic labor exchange elements defined at § 652.3 of these regulations.

§ 652.6 State planning process and plan.

(a) The State agency designated pursuant to section 4 of the Act shall prepare and submit to the Secretary, through the Governor, an annual plan for providing services and activities within the State as authorized under section 7(a) of the Act. The Secretary shall establish a date for receipt of plans by the Secretary. The plans:

- (1) Shall be developed in accordance with the processes established by the State under § 652.4(a) of these regulations;
- (2) Shall be consistent with section 8 of the Act;

(3) Shall include assurances that the State agency and its subrecipients will comply with the Act and applicable law, rules and regulations; and

(4) Shall, in addition to the requirements of section 8(d) of the Act, contain a description of each of the following:

(i) The overall goals and objectives of the State agency and their relationship to the Governor's annual statement of goals and objectives pursuant to section 121(a) of the JTPA;

(ii) The overall services to be provided by the State agency in implementation of section 7(a) of the Act, as planned pursuant to paragraph (a)(1) of this section; and

(iii) The State agency plans for meeting the requirements of a basic labor exchange system, including a description of how:

(A) Jobseekers will be assisted in finding employment;

(B) Employers will be assisted in filling jobs;

(C) The match between jobseekers and employers will be facilitated;

(D) The State will participate in a system for clearing labor between the States, including the use of standardized classification systems issued by the Secretary pursuant to section 462(c)(3) of JTPA; and

(E) The work test requirements of the State unemployment compensation system will be met.

(b) Plans submitted to the Secretary pursuant to section 8(b)(5) of the Act shall include:

(1) The State agency submission pursuant to paragraph (a) of this section, including the State agency's proposals for the component(s) in dispute;

(2) The alternative(s) proposed jointly by the appropriate Private Industry Councils (PIC(s)) and Chief Elected Officials (CEO(s));

(3) The SJTCC's proposed resolution; and

(4) Any comments or alternative(s) the Governor may submit relating to the disputed component(s).

(c) The Governor shall describe the use of resources set-aside pursuant to section 7(b) of the Act. Such description may be provided:

(1) As a separate component of the State plan developed pursuant to paragraph (a) of this section; or

(2) As a separate submission to the Secretary, timed to coincide with the submission of the State plan to the Secretary.

(Approved by the Office of Management and Budget under control number 1205-0209)

§ 652.7 Review and approval of plans.

(a) Within 30 days of receipt of the plans submitted pursuant to § 652.6 of these regulations, the Secretary shall provide written notification of his determination to the Governor, the State agency and the SJTCC. Any notice of disapproval shall include an explanation of the reasons for such determination. The Secretary shall approve such plans unless:

(1) They fail to conform to a specific provision of the Act or applicable law or regulations; or

(2) The description pursuant to § 652.6(a)(4)(iii) of these regulations indicates that the services to be provided are not reasonably appropriate and adequate to achieve the requirements of a basic labor exchange system as described in § 652.3 of these regulations.

(b) Where alternative plans, or components, are submitted pursuant to sections 8(b)(5) or 8(c) of the Act, the Secretary shall, within 30 days of receipt of such plans, assure their conformity with § 652.6 of these regulations and choose one of the alternatives and thereby resolve the dispute.

(c) If the Secretary disapproves the State agency plan, pursuant to paragraph (a) of this section, the State agency shall have a thirty (30) day period to bring the plan into conformance. If, at the end of the thirty (30) day period, the Secretary continues to disapprove the plan, the State agency may appeal the determination as set forth in 20 CFR 658.707-711.

(d) The Secretary's determination pursuant to paragraph (b) of this section is final agency action.

(e) Modifications of plans already approved by the Secretary shall be developed, submitted and reviewed pursuant to §§ 652.6 and 652.7 of these regulations.

(Approved by the Office of Management and Budget under control number 1205-0209)

§ 652.8 Administrative provisions.

(a) *Administrative Requirements.* The Employment Security Manual shall not be applicable to funds appropriated under the Wagner-Peyser Act. Except as provided for in paragraph (f) of this section, administrative requirements and cost principles applicable to grants under this part 652 are as specified in 41 CFR part 29-70 and 41 CFR part 1-15.7.

(b) *Management systems, reporting and recordkeeping.* (1) The State shall ensure that financial systems provide fiscal control and accounting procedures sufficient to permit preparation of required reports, and the tracing of funds to a level of expenditure adequate to establish that funds have not been expended in violation of the restrictions on the use of such funds (section 10(a)).

(2) The financial management system and the program information system shall provide federally required records and reports that are uniform in definition, accessible to authorized Federal and State staff, and verifiable for monitoring, reporting, audit and evaluation purposes (section 10(c)).

(c) *Reports Required.* (1) Each State shall make reports pursuant to instructions issued by the Secretary and in such format as the Secretary shall prescribe.

(2) The Secretary is authorized to monitor and investigate pursuant to section 10 of the Act.

(d) *Special Administrative and Cost Provisions.* (1) Neither the Department nor the State is a guarantor of the accuracy or truthfulness of information obtained from employers or applicants in the process of operating a labor exchange activity.

(2) Prior approval authority, as described in various sections of 41 CFR part 29-70 and 41 CFR 1-15.7, is delegated to the State except that the Secretary reserves the right to require transfer of title on nonexpendable Automated Data Processing Equipment (ADPE), in accordance with provisions contained in 41 CFR 29-70.215. The Secretary reserves the right to exercise prior approval authority in other areas, after providing advance notice to the State.

(3) Application for financial assistance and modification requirements shall be as specified under this part.

(4) Cost of promotional and informational activities consistent with the provisions of the Act, describing services offered by employment security agencies, job openings, labor market information, and similar items are allowable.

(5) Each State shall retain basic documents for the minimum period specified below:

(i) Work Application: One year.

(ii) Job Order: One Year.

(6) Costs of employer contributions and expenses incurred for State agency fringe benefit plans that do not meet the requirements in 41 CFR 1-15.711-13 and 711-10 are allowable, provided that:

(i) For retirement plans, on behalf of individuals employed before the effective date of this part, the plan is authorized by State law and previously approved by the Secretary; the plan is insured by a private insurance carrier which is licensed to operate this type of plan; and any dividends or similar credits due to participation in the plan are credited against the next premium falling due under the contract;

(ii) For retirement plans on behalf of individuals employed after the effective date of this part, and for fringe benefit plans other than retirement, the Secretary grants a time extension to cover an interim period if State legislative action is required for such employees to be covered by plans which meet the requirements of 41 CFR 1-15.711-13 and 711-10. During this interim period, State agency employees may be enrolled in plans open to State agency employees only. No such extension may continue beyond the 60th day following the completion of the next full session of the State legislature which begins after the effective date of this part;

(iii) For fringe benefit plans other than retirement, the Secretary grants a time extension which may continue until such time as they are comparable in cost to those fringe benefit plans available to other similarly employed employees of the State on the condition that there are no benefit improvements. The Secretary may grant this time extension if the State agency can demonstrate that the extension is necessary to prevent loss of benefits to current States agency employees,

retirees and/or their fringe benefit plan beneficiaries, or that it is necessary to avoid unreasonable expenditures on behalf of the employee or employer to maintain such fringe benefits for current employees and retirees. At such time as the cost of these fringe benefit plans becomes equitable with those available to other similarly employed State employees, the time extension will cease and the requirements of 41 CFR 1-15.711-13 and 1-15.711-10 will apply;

(iv) Requests for time extensions under this section will include an opinion of the State Attorney General, that either legislative action is required to accomplish compliance with 41 CFR 1-15.711-13 and 1-15.711-10 or, for (d)(6)(iii) of this section that such compliance would result in either loss of current benefits to State agency employees and retirees or unreasonable expenditures to maintain these benefits. Such requests will be filed with the Secretary no later than 30 days after the effective date of this part; and

(v) Time extensions granted relative to (d)(6)(iii) of this section require a signed statement by the State Agency Administrator, that no improvements have been made to fringe benefits under the extension and that the plan(s) is (are) not consistent with those available to other similarly employed State employees, for each year of the extension. Documentation supporting the affidavit shall be maintained for audit purposes.

(7) Payments from the State's Wagner-Peyser allotment made into a State's account in the Unemployment Trust Fund for the purpose of reducing charges against Reed Act funds (section 903(c) of the Social Security Act, as amended (42 U.S.C. 1103(c)) are allowable costs, provided that:

(i) The charges against Reed Act funds were for amounts appropriated, obligated, and expended for the acquisition of automatic data processing installations or for the acquisition or major renovation of State owned office building; and

(ii) With respect to each acquisition of improvement of property pursuant to paragraph (d)(7)(i) of this section, the payments are accounted for in the State's records as credits against

equivalent amounts of Reed Act Funds used for administrative expenditures.

(e) *Disclosure of Information.* (1) The State shall assure the proper disclosure of information pursuant to section 3(b) of the Act.

(2) The information specified in section 3(b) and other sections of the Act, shall also be provided to officers or any employee of the Federal Government of a State government lawfully charged with administration of unemployment compensation laws, employment service activities under the Act or other related legislation, but only for purposes reasonably necessary for the proper administration of such laws.

(f) *Audits.* (1) At least once every 2 years, the State shall prepare or have prepared an independent financial and compliance audit covering each full program year not covered in the previous audit, except that funds expended pursuant to section 7(b) of the Act shall be audited annually.

(2) The Comptroller General and the Inspector General of the Department shall have the authority to conduct audits, evaluations or investigations necessary to meet their responsibilities under sections 9(b)(1) and 9(b)(2), respectively, of the Act.

(3) The audit, conducted pursuant to paragraph (f)(1) or (f)(2) of this section, shall be submitted to the Secretary who shall make an initial determination. Such determinations shall be based on the requirements of the Act, regulations, and State plan.

(i) The initial determination shall identify the audit findings, state the Secretary's proposed determination of the allowability of questioned costs and activities, and provide for informal resolution of those matters in controversy contained in the initial determination.

(ii) The Secretary shall not impose sanctions and corrective actions without first providing the State with an opportunity to present documentation or arguments to resolve informally those matters in controversy contained in the Secretary's initial determination. The informal resolution period shall be at least 60 days from issuance of the initial determination and no more than 170 days from the receipt by the Secretary of the final approved

audit report. If the matters are resolved informally, the Secretary shall issue a final determination pursuant to paragraph (f)(3)(iii) of this section which notifies the parties in writing of the nature of the resolution and may close the file.

(iii) If the matter is not resolved informally, the Secretary shall provide each party with a final written determination by certified mail, return receipt requested. In the case of audits, the final determination shall be issued not later than 180 days after the receipt by the Secretary of the final approved audit report. The final determination shall:

(A) Indicate that efforts to resolve informally matters contained in the initial determination have been unsuccessful;

(B) List those matters upon which the parties continue to disagree;

(C) List any modifications to the factual findings and conclusions set forth in the initial determination;

(D) Establish a debt if appropriate;

(E) Determine liability, method of restitution of funds and sanctions;

(F) Offer an opportunity for a hearing in accordance with 20 CFR 658.707 through 658.711 in the case of a final determination imposing a sanction or corrective action; and

(G) Constitute final agency action unless a hearing is requested.

(g) *Sanctions for Violation of the Act.*

(1) The Secretary may impose appropriate sanctions and corrective actions for violation of the Act, regulations, or State plan, including the following:

(i) Requiring repayment, for debts owed the Government under the grant, from non-Federal funds;

(ii) Offsetting debts arising from the misexpenditure of grant funds, against amounts to which the State is or may be entitled under the Act, provided that debts arising from gross negligence or willful misuse of funds shall not be offset against future grants. When the Secretary reduces amounts allotted to the State by the amount of the misexpenditure, the debt shall be fully satisfied;

(iii) Determining the amount of Federal cash maintained by the State or a subrecipient in excess of reasonable grant needs, establishing a debt for the

amount of such excessive cash, and charging interest on that debt;

(iv) Imposing other appropriate sanctions or corrective actions, except where specifically prohibited by the Act or regulations.

(2) To impose a sanction or corrective action, the Secretary shall utilize the initial and final determination procedures outlined in (f)(3) of this section.

(h) *Other violations.* Violations or alleged violations of the Act, regulations, or grant terms and conditions except those pertaining to audits or discrimination shall be determined and handled in accordance with 20 CFR part 658, subpart H.

(i) *Fraud and abuse.* Any persons 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.

(j) *Nondiscrimination and Affirmative Action Requirements.* States shall:

(1) Assure that no individual be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any services or activities authorized under the Act because of age, race, sex, color, religion, national origin, handicap, political affiliation or belief. All complaints alleging discrimination shall be filed and processed according to the procedures in 29 CFR part 31;

(2) Assure that discriminatory job orders will not be accepted, except where the stated requirement is a bona fide occupational qualification (BFOQ). See, generally, 42 U.S.C. 2000(e)-2(e), 29 CFR parts 1604, 1606, 1625.

(3) Assure that employers' valid affirmative action requests will be accepted and a significant number of qualified applicants from the target group(s) will be included to enable the employer to meet its affirmative action obligations.

(4) Assure that employment testing programs will comply with 41 CFR part 60-3 and 29 CFR parts 1627 and 32.

(5) Nondiscrimination and equal opportunity requirements and procedures, including complaint processing

and compliance reviews, will be governed by the provisions of 29 CFR parts 31 and 32.

§652.9 Labor disputes.

(a) State agencies shall make no job referral on job orders which will aid directly or indirectly in the filling of a job opening which is vacant because the former occupant is on strike, or is being locked out in the course of a labor dispute, or the filling of which is otherwise an issue in a labor dispute involving a work stoppage.

(b) Written notification shall be provided to all applicants referred to jobs not at issue in the labor dispute that a labor dispute exists in the employing establishment and that the job to which the applicant is being referred is not at issue in the dispute.

(c) When a job order is received from an employer reportedly involved in a labor dispute involving a work stoppage, State agencies shall:

(1) Verify the existence of the labor dispute and determine its significance with respect to each vacancy involved in the job order; and

(2) Notify all potentially affected staff concerning the labor dispute.

(d) State agencies shall resume full referral services when they have been notified of, and verified with the employer and workers' representative(s), that the labor dispute has been terminated.

(e) State agencies shall notify the regional office in writing of the existence of labor disputes which:

(1) Result in a work stoppage at an establishment involving a significant number of workers; or

(2) Involve multi-establishment employers with other establishments outside the reporting State.

Subpart B—Services for Veterans

§652.100 Services for veterans.

Services for veterans are administered by the Office of the Assistant Secretary for Veterans' Employment and Training (OASVET). OASVET's general regulations are located in chapter IX of this title.

[54 FR 39354, Sept. 26, 1989]

PART 653—SERVICES OF THE EMPLOYMENT SERVICE SYSTEM

Subpart A—Basic Services of the Employment Service System [Reserved]

Subpart B—Services for Migrant and Seasonal Farmworkers (MSFWs)

Sec.

- 653.100 Purpose and scope of subpart.
- 653.101 Provision of services to migrant and seasonal farmworkers (MSFWs).
- 653.102 Job information.
- 653.103 MSFW job applications.
- 653.104 Services to MSFW family members, farm labor contractors, and crew members.
- 653.105 Job applications at day-haul facilities.
- 653.106 JS day-haul responsibilities.
- 653.107 Outreach.
- 653.108 State agency self-monitoring.
- 653.109 Data collection.
- 653.110 Disclosure of data.
- 653.111 State agency staffing requirements.
- 653.112 State agency program budget plans.
- 653.113 Processing apparent violations.

Subpart C—Services for Veterans [Reserved]

Subpart D—Services to the Handicapped [Reserved]

Subpart E—Support Services [Reserved]

Subpart F—Agricultural Clearance Order Activity

- 653.500 Purpose and scope of subpart.
- 653.501 Requirements for accepting and processing clearance orders.
- 653.502 Changes in crop and recruitment situations.
- 653.503 Field checks.

AUTHORITY: 38 U.S.C. chapters 41 and 42; Wagner-Peyser Act, as amended, 29 U.S.C. 49 et seq.; sec. 104 of the Emergency Jobs and Unemployment Assistance Act of 1974 Pub. L. 93-567, 88 Stat. 1845, unless otherwise noted.

Subpart A—Basic Services of the Employment Service System [Reserved]

Subpart B—Services for Migrant and Seasonal Farmworkers (MSFWs)

SOURCE: 45 FR 39459, June 10, 1980, unless otherwise noted.