

102-477) (25 U.S.C. 3401 *et seq.*). Also, Federally-recognized tribes that administer INA funds and funds provided by more than one State under other sections of WIA title I may enter into an agreement with the Governors to transfer the State funds to the INA program. (WIA sec. 166(f) and (h)(6).)

§ 668.940 What is the role of the Native American Employment and Training Council?

The Native American Employment and Training Council is a body composed of representatives of the grantee community which advises the Secretary on all aspects of Native American employment and training program implementation. WIA section 166(h)(4) continues the Council essentially as it is currently constituted, with the exception that all the Council members no longer have to be Native American. However, the nature of the consultative process remains essentially unchanged. The Department continues to support the Council.

PART 669—MIGRANT AND SEASONAL FARMWORKER PROGRAMS UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

Subpart A—Purpose and Definitions

- Sec.
- 669.100 What is the purpose of the Migrant and Seasonal Farmworker (MSFW) Program established under WIA section 167?
- 669.110 What definitions apply to this program?
- 669.120 How is the MSFW program administered by the Department of Labor?
- 669.130 What unit within the Department administers the Migrant and Seasonal Farmworker programs funded under WIA section 167?
- 669.140 How does the DSFP assist the MSFW grantee organizations serve farmworker customers?
- 669.150 How are regulations established for this program?
- 669.160 How does the Department consult with MSFW organizations in developing rules, regulations and standards of accountability and other policy guidance for the MSFW Programs?
- 669.170 What WIA regulations apply to the programs funded under WIA section 167?

Subpart B—MSFW Program’s Service Delivery System

- 669.200 Who is eligible to receive a MSFW grant?
- 669.210 How does an eligible entity become a MSFW grantee?
- 669.220 What is the role of the MSFW grantee in the One-Stop delivery system?
- 669.230 Can a MSFW grantee’s designation be terminated?
- 669.240 How will the Department use funds appropriated under WIA section 167 for MSFW programs?

Subpart C—MSFW Program Customers and Available Program Services

- 669.300 What are the general responsibilities of the MSFW grantees?
- 669.310 What are the basic components of a MSFW service delivery strategy?
- 669.320 Who is eligible to receive services under the MSFW Program?
- 669.330 How are services delivered to the customer?
- 669.340 What core services are available to eligible MSFWs?
- 669.350 How are core services delivered to MSFWs?
- 669.360 May grantees provide emergency assistance to MSFWs?
- 669.370 What intensive services may be provided to eligible MSFWs?
- 669.380 What is the objective assessment that is authorized as an intensive service?
- 669.400 What are the elements of the IEP that is authorized as an intensive service?
- 669.410 What training services may be provided to eligible MSFWs?
- 669.420 What must be included in an on-the-job training contract?

Subpart D—Performance Accountability, Planning and Waiver Provision

- 669.500 What performance measures and standards apply to the MSFW Program?
- 669.510 What planning documents must a MSFW grantee submit to the Department?
- 669.520 What information is required in the MSFW grant plans?
- 669.530 What are the submission dates for these plans?
- 669.540 Under what circumstances are the terms of the grantee’s plan modified by the grantee or the Department?
- 669.550 How are costs classified under the MSFW Program?
- 669.560 Are there regulatory and/or statutory waiver provisions that apply to WIA section 167?
- 669.570 What information is required to document a requested waiver?

Subpart E—The MSFW Youth Program

- 669.600 What is the purpose of the WIA section 167 MSFW Youth Program?
- 669.610 What is the relationship between the MSFW youth program and the MSFW program authorized at WIA section 167?
- 669.620 How do the MSFW youth program regulations apply to the MSFW program authorized under WIA section 167?
- 669.630 What are the requirements for designation as a “MSFW youth program grantee”?
- 669.640 What is the process for applying for designation as a MSFW youth program grantee?
- 669.650 How are MSFW youth funds allocated to section 167 grantees?
- 669.660 What planning documents and information are required in the application for MSFW youth grants and when must they be filed?
- 669.670 Who is eligible to receive services under the section 167 MSFW youth program?
- 669.680 What activities and services may be provided under the MSFW youth program?

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Subpart A—Purpose and Definitions

§ 669.100 What is the purpose of the Migrant and Seasonal Farmworker (MSFW) program established under WIA section 167?

The purpose of the MSFW Program is to strengthen the ability of eligible migrant and seasonal farmworkers and their families to achieve economic self-sufficiency. This part provides the regulatory requirements applicable to the expenditure of WIA section 167 funds for such program.

§ 669.110 What definitions apply to this program?

In addition to the definitions found in WIA secs. 101 and 167 and in 20 CFR 660.330, the following definitions apply to programs under this subpart:

Allowances means direct payments, which must not exceed the higher of the State or Federal minimum wage, made to MSFW participants during their enrollment to enable them to participate in training services.

Capacity enhancement means the technical assistance afforded to grantees and grantee staff by the Department to improve the quality of the program and the delivery of program services to MSFWs.

Department means the U.S. Department of Labor, including its agencies and organizational units, unless otherwise indicated.

Disadvantaged means a farmworker whose income, for any 12 consecutive months out of the 24 months immediately before the farmworker applies for the program, does not exceed the higher of either the poverty line or 70 percent of the lower living standard income level.

DSFP means the Division of Seasonal Farmworker Programs within the Employment and Training Administration of the Department, or a successor organizational unit.

Eligibility determination period means any consecutive 12-month period within the 24-month period immediately preceding the date of application for the MSFW program by the applicant farmworker.

Emergency Assistance means assistance that addresses immediate needs of farmworkers and their families, provided by MSFW grantees. Except for evidence to support legal working status in the United States and Selective Service registration, where applicable, the applicant’s self-attestation is accepted as eligibility for emergency assistance.

Farmwork means those occupations in the agricultural industries identified by the Department for inclusion in its allocation formula for MSFW-funded programs.

MSFW program grantee means an entity which is awarded a WIA grant directly from the Department to carry out the MSFW program in one or more designated States or substate areas.

MSFW means a Migrant or Seasonal Farmworker under WIA section 167.

MOU means Memorandum of Understanding.

Self-certification means a farmworker’s signed attestation that the information he/she submits to demonstrate eligibility for the MSFW program is true and accurate.

Service area means the geographical jurisdiction in which a WIA section 167 grantee is designated to operate.

Work experience means a planned, structured learning experience that takes place in a workplace for a limited period of time. Work experience may be paid or unpaid, as appropriate.

§ 669.120 How is the MSFW program administered by the Department of Labor?

This program is centrally administered by the Department of Labor in a manner consistent with the requirements of WIA section 167. As described in § 669.210, the Secretary designates grantees using procedures consistent with standard Federal government competitive procedures. The Secretary awards other grants and contracts using similar competitive procedures.

§ 669.130 What unit within the Department administers the Migrant and Seasonal Farmworker programs funded under WIA section 167?

The Department has designated the Division of Seasonal Farmworker Programs (DSFP), or its successor organization, within the Employment and Training Administration, as the organizational unit that administers MSFW programs at the Federal level.

§ 669.140 How does the DSFP assist the MSFW grantee organizations serve farmworker customers?

The Department provides technical assistance and training to MSFW grantees, for the purposes of program implementation and program performance management leading to enhancement of services to and continuous improvement in the employment outcomes of farmworkers.

§ 669.150 How are regulations established for this program?

In developing regulations for WIA section 167, the Secretary consults with the Migrant and Seasonal Farmworker Employment and Training Advisory Committee. The regulations and program guidance consider the economic circumstances and demographics of eligible migrant and seasonal farmworkers.

§ 669.160 How does the Department consult with MSFW organizations in developing rules, regulations and standards of accountability and other policy guidance for the MSFW Programs?

(a) The Department considers the MSFW grantee community as a full partner in the development of policies for the MSFW programs under the Act.

(b) The Department has established and continues to support the MSFW Employment and Training Advisory Committee. Through the Advisory Committee, the Department actively seeks and considers the views of the grantee community prior to establishing policies and/or program regulations, according to the requirements of WIA section 167.

§ 669.170 What WIA regulations apply to the programs funded under WIA section 167?

(a) The regulations found in this subpart;

(b) The general administrative requirements found in 20 CFR part 667, including the regulations concerning Complaints, Investigations and Hearings found at 20 CFR part 667, subpart E through subpart H, which cover programs under WIA section 167;

(c) The Department's regulations codifying the common rules implementing Office of Management and Budget (OMB) Circulars, which generally apply to Federal programs carried out by State and local governments and nonprofit organizations at 29 CFR parts 95, 96, 97, and 99, as applicable.

Subpart B—MSFW Program's Service Delivery System

§ 669.200 Who is eligible to receive a MSFW grant?

(a) To be eligible to receive a grant under this section, an entity must have:

(1) An understanding of the problems of eligible migrant and seasonal farmworkers and their dependents;

(2) A familiarity with the agricultural industry and the labor market needs of the geographic area to be served;

§ 669.210

(3) The capacity to effectively administer a diversified program of workforce investment activities and related assistance for eligible migrant and seasonal farmworkers (including farmworker youth) as described in paragraph (b) of this section.

(b) For purposes of paragraph (a)(3) of this section, an entity's "capacity to effectively administer" a program may be demonstrated by:

- (1) Organizational experience; or
- (2) Significant experience of its key staff in administering similar programs.

§ 669.210 How does an eligible entity become a MSFW grantee?

To become a MSFW grantee and receive a grant under this subpart, the entity must respond to a Solicitation for Grant Applications (SGA). The SGA may contain additional requirements for the grant application or the grantee's two-year plan. Under the SGA, grantees will be selected using standard Federal Government competitive procedures. The entity's proposal must describe a two-year strategy for meeting the needs of eligible migrant and seasonal farmworkers in the geographic area the entity seeks to serve.

§ 669.220 What is the role of the MSFW grantee in the One-Stop delivery system?

(a) In those local areas where there is a grantee MSFW field office, the grantee is a required partner of the local One-Stop delivery system and is subject to the provisions relating to such partners described in 20 CFR part 662. Consistent with those provisions, the grantee and the Local Board must negotiate an MOU which sets forth their respective responsibilities for making the full range of core services available to farmworkers. In local areas without a grantee MSFW field office but with a large concentration of MSFWs, the grantee should consider the availability of electronic connections and other means to participate in the One-stop system in that area, in order to serve those individuals.

(b) The MOU should reflect appropriate and equitable services to MSFWs, and may include costs of services to MSFWs incurred by the One-

20 CFR Ch. V (4-1-00 Edition)

Stop that extend beyond Wagner-Peyser funded services and activities.

§ 669.230 Can a MSFW grantee's designation be terminated?

Yes, a grantee's designation may be terminated for cause:

(a) By the Secretary, in emergency circumstances when such action is necessary to protect the integrity of Federal funds or ensure the proper operation of the program. Any grantee so terminated will be provided with written notice and an opportunity for a hearing within 30 days after the termination (WIA sec. 184(e).); or

(b) By the Grant Officer, if there is a substantial or persistent violation of the requirements in the Act or these regulations. In such a case, the Grant Officer must provide the grantee with 60 days prior written notice, stating the reasons why termination is proposed, and the applicable appeal procedures.

§ 669.240 How will the Department use funds appropriated under WIA section 167 for MSFW programs?

(a) At least 94 percent of the funds appropriated each year for WIA section 167 activities must be allocated to State service areas, based on the distribution of the eligible MSFW population determined under a formula which has been published in the FEDERAL REGISTER. Grants are awarded under the competitive process for the provision of services to eligible farmworkers within each service area.

(b) The balance, 6 percent of the appropriated funds, will be used for discretionary purposes for such activities as grantee technical assistance and support of farmworker housing activities.

Subpart C—MSFW Program Customers and Available Program Services

§ 669.300 What are the general responsibilities of the MSFW grantees?

Each grantee is responsible for providing needed services in accordance with a service delivery strategy described in its approved grant plan. These services must reflect the needs of the MSFW population in the service

area and include the services and training activities that are necessary to achieve each participant's employment goals.

§ 669.310 What are the basic components of a MSFW service delivery strategy?

The MSFW service delivery strategy must include:

- (a) A customer-centered case management approach;
- (b) The provision of workforce investment activities, which include, core services, intensive services, and training services as described in WIA section 134, as appropriate;
- (c) The arrangements under the MOUs with the applicable Local Workforce Investment Boards for the delivery of core services to MSFWs.

§ 669.320 Who is eligible to receive services under the MSFW Program?

Disadvantaged migrant and seasonal farmworkers, as defined in §669.110, and their dependents are eligible for services funded by the MSFW program.

§ 669.330 How are services delivered to the customer?

To ensure that all services are focused on the customer's needs, services are provided through a case-management approach and may include: Core, intensive and training services; and related assistance, which includes emergency assistance and supportive services. The basic services and delivery of case-management activities are further described at §§669.340 through 669.410 of this subpart. Consistent with 20 CFR part 663, prior to intensive services, a participant must receive at least one core service, and, prior to training services, a participant must receive at least one intensive service.

§ 669.340 What core services are available to eligible MSFWs?

The core services identified in WIA section 134(d)(2).

§ 669.350 How are core services delivered to MSFWs?

(a) The full range of core services are available to MSFWs, as well as other individuals, at One-Stop Centers as described in 20 CFR part 662.

(b) Where a MSFW field office is located within the workforce investment area of a One-Stop center, core services must be made available through the One-Stop delivery system, as determined in the required MOU between the Local Board and the MSFW grantee.

§ 669.360 May grantees provide emergency assistance to MSFWs?

(a) Yes. Emergency assistance (as defined in §669.110 of this part) is a form of the related assistance that is authorized under WIA section 167(d) and may be provided by a grantee as described in the grant plan.

(b) In providing emergency assistance, the MSFW may use an abbreviated eligibility determination process that accepts the applicant's self-attestation as final evidence of eligibility, except that self-attestation may not be used to establish the requirements of legal working status in the United States, and Selective Service registration, where applicable.

§ 669.370 What intensive services may be provided to eligible MSFWs?

(a) Intensive services available to farmworkers include those described in WIA section 134(d)(3)(C).

(b) Intensive services may also include:

- (1) Dropout prevention activities;
- (2) Allowance payments;
- (3) Work experience, which:

(i) Is designed to promote the development of good work habits and basic work skills at the work-site (work experience may be conducted with public and private non-profit and private for-profit sectors); and

(ii) Compensates participants at no less than the applicable State or Federal minimum wage.

(4) Literacy and English-as-a-Second language; and

(5) Other services identified in the approved grant plan.

§ 669.380 What is the objective assessment that is authorized as an intensive service?

(a) An objective assessment is a procedure designed to comprehensively assess the skills, abilities, and interests

§ 669.400

of each employment and training participant through the use of diagnostic testing and other assessment tools. The methods used by the grantee in conducting the objective assessment may include:

- (1) Structured in-depth interviews;
- (2) Skills and aptitude assessments;
- (3) Performance assessments (for example, skills or work samples, including those that measure interest and capability to train in nontraditional employment);
- (4) Interest or attitude inventories;
- (5) Career guidance instruments;
- (6) Aptitude tests; and
- (7) Basic skills tests.

(b) The objective assessment is an ongoing process that requires the grantee staff to remain in close consultation with each participant to continuously obtain current information about the participant's progress that may be relevant to his/her Individual Employment Plan (IEP).

§ 669.400 What are the elements of the IEP that is authorized as an intensive service?

The elements of the IEP are:

(a) Joint development: The grantee develops the IEP in partnership with the participant;

(b) Customer focus: The combination of services chosen with the participant must be consistent with the results of any objective assessment, responsive to the expressed goals of the participant, and must include periodic evaluation of planned goals and a record of accomplishments in consultation with the participant;

(c) Length/type of service: The type and duration of intensive or training services must be based upon:

- (1) The employment/career goal;
- (2) Referrals to other programs for specified activities; and
- (3) The delivery agents and schedules for intensive services, training and training-related supportive services; and

(d) Privacy: As a customer-centered case management tool, an IEP is a personal record and must receive confidential treatment.

20 CFR Ch. V (4-1-00 Edition)

§ 669.410 What training services may be provided to eligible MSFWs?

(a) Training services include those described in WIA sections 134(d)(4)(D) and 167(d), and may be described in the IEP and may include:

- (1) On-the-job training activities under a contract between the participating employer and the grantee;
- (2) Workplace safety and farmworker pesticide training;
- (3) Housing development assistance;
- (4) Training-related supportive services; and
- (b) Other training activities identified in the approved grant plan.

§ 669.420 What must be included in an on-the-job training contract?

At a minimum, the on-the-job training contract must include:

- (a) The occupation(s) for which training is to be provided;
- (b) The duration of training;
- (c) The wage rate to be paid to the trainee;
- (d) The rate of reimbursement;
- (e) The maximum amount of reimbursement;
- (f) A training outline that reflects the work skills required for the position;
- (g) An outline of any other separate classroom training that may be provided by the employer;
- (h) Application of the general program requirements of WIA section 195(4) and section 101(31); and
- (i) The employer's agreement to maintain and make available time and attendance, payroll and other records to support amounts claimed by the employer for reimbursement under the OJT contract;

Subpart D—Performance Accountability, Planning and Waiver Provision

§ 669.500 What performance measures and standards apply to the MSFW Program?

(a) The MSFW program will use the core indicators of performance common to the adult and youth programs, described in 20 CFR part 666. The levels of performance for the farmworker indicators will be established pursuant to a negotiation between the Department

and the grantee. The levels must take into account the characteristics of the population to be served and the economic conditions in the service area. Proposed levels of performance are to be included in the grantee plan submission, and the agreed to levels must be included in the approved plan.

(b) The Department may develop additional performance indicators with appropriate levels of performance for evaluating programs that serve farmworkers and which are reflective of the State service area economy and local demographics of eligible MSFWs. The levels of performance for these additional indicators must be negotiated with the grantee and included in the approved plan.

§ 669.510 What planning documents must a MSFW grantee submit to the Department?

Each grantee receiving WIA section 167 program funds must submit to DSFP a comprehensive service delivery plan and a projection of participant services and expenditures covering the two-year designation cycle.

§ 669.520 What information is required in the MSFW grant plans?

An MSFW grantee's biennial plan must describe:

- (a) The employment and education needs of the farmworker population to be served;
- (b) The manner in which proposed services to farmworkers and their families will strengthen their ability to obtain or retain employment or stabilize their agricultural employment;
- (c) The related assistance and supportive services to be provided and the manner in which such assistance and services are to be coordinated with other available services;
- (d) The performance indicators and proposed levels of performance used to assess the performance of such entity, including the specific goals of the grantee's program for the two Program Years involved;
- (e) The method the grantee will use to target its services on specific segments of the eligible population, as appropriate;
- (f) The array of services which the grantee intends to make available,

with costs specified on forms prescribed by the Department. These forms will indicate how many participants the grantee expects to serve, by activity, the results expected under the grantee's plan, and the anticipated expenditures by cost category; and

- (g) Its response to any other requirements set forth in the SGA issued under § 669.210 of this part.

§ 669.530 What are the submission dates for these plans?

Plan submission dates will be announced by the Department in the SGA issued under § 669.220 of this part.

§ 669.540 Under what circumstances are the terms of the grantee's plan modified by the grantee or the Department?

(a) Plans must be modified to reflect the funding level for the second year of the designation cycle. Modifications for second year funding must be submitted at a time to be determined by the Department, generally no later than June 1 prior to the beginning of the second year of the designation cycle.

(b) The Department may unilaterally modify the grantee's plan to add funds or, if the total amount of funds available for allotment is reduced by Congress, to reduce each grantee's grant amount.

(c) The grantee may modify its plan to add, delete, expand, or reduce any part of the program plan or allowable activities. Such modifications may be made by the grantee without Departmental approval except where the modification reduces the total number of participants to be served annually under intensive and/or training services by 15 percent or more, in which case the plan may only be modified with Departmental approval.

(d) If the grantee is approved for a regulatory waiver under §§ 669.560 and 669.570, the grantee must submit a modification of its service delivery plan to reflect the effect of the waiver.

§ 669.550 How are costs classified under the MSFW Program?

Costs are classified as follows:

- (a) Administrative costs, as defined in 20 CFR 667.220; and

§ 669.560

(b) Program costs, which are all other costs not defined as administrative.

Program costs must be classified and reported in the following categories:

(1) Related assistance including emergency assistance and supportive services, including allocated staff costs; and

(2) All other program services, including allocated staff costs.

§ 669.560 Are there regulatory and/or statutory waiver provisions that apply to WIA section 167?

(a) The statutory waiver provision at WIA section 189(i) does not apply to WIA section 167.

(b) MSFW grantees may request waiver of any regulatory provisions only when such regulatory provisions are:

(1) Not required by WIA;

(2) Not related to wage and labor standards, nondisplacement protection, worker rights, participation and protection of workers and participants, and eligibility of participants, grievance procedures, judicial review, non-discrimination, allocation of funds, procedures for review and approval of plans; and

(3) Not related to the key reform principles embodied in WIA, described in 20 CFR 661.400.

§ 669.570 What information is required to document a requested waiver?

(a) To request a waiver, a grantee must submit a waiver plan that:

(1) Describes the goals of the waiver, the expected programmatic outcomes, and how the waiver will improve the provision of WIA activities;

(2) Is consistent with guidelines established by the Department and the waiver provisions at 20 CFR 661.400 through 661.420; and

(b) Includes a modified service delivery plan reflecting the effect of requested waiver.

20 CFR Ch. V (4-1-00 Edition)

Subpart E—The MSFW Youth Program

§ 669.600 What is the purpose of the WIA section 167 MSFW Youth Program?

The purpose of the MSFW youth program is to provide an effective and comprehensive array of educational opportunities, employment skills, and life enhancement activities to at-risk and out-of-school MSFW youth that lead to success in school, economic stability and development into productive members of society.

§ 669.610 What is the relationship between the MSFW youth program and the MSFW program authorized at WIA section 167?

The MSFW youth program is funded under WIA section 127(b)(1)(A)(iii) to provide farmworker youth activities under the auspices of WIA section 167. These funds are specifically earmarked for MSFW youth. Funds provided for the section 167 program may also be used for youth, but are not limited to this age group.

§ 669.620 How do the MSFW youth program regulations apply to the MSFW program authorized under WIA section 167?

(a) This subpart applies only to the administration of grants for MSFW youth programs funded under WIA section 127(b)(1)(A)(iii).

(b) The regulations for the MSFW program in this part apply to the administration of the MSFW youth program, except as modified in this subpart.

§ 669.630 What are the requirements for designation as a “MSFW youth program grantee”?

Any entity may apply for designation as a “MSFW youth program grantee” consistent with requirements described in the SGA. The Department gives special consideration to an entity in any service area for which the entity has been designated as a WIA section 167 MSFW program grantee.

§ 669.640 What is the process for applying for designation as a MSFW youth program grantee?

(a) To apply for designation as a MSFW youth program grantee, entities must respond to an SGA by submitting a plan that meets the requirements of WIA section 167(c)(2) and describes a two-year strategy for meeting the needs of eligible MSFW youth in the service area the entity seeks to serve.

(b) The designation process is conducted competitively (subject to §669.210) through a selection process distinct from the one used to select WIA section 167 MSFW program grantees.

§ 669.650 How are MSFW youth funds allocated to section 167 grantees?

The allocation of funds among entities designated as WIA section 167 MSFW Youth Program grantees is based on the comparative merits of the applications, in accordance with criteria set forth in the SGA. However, the Secretary may include criteria in the SGA that promote a geographical distribution of funds and that encourages both large- and small-scale programs.

§ 669.660 What planning documents and information are required in the application for MSFW youth grants and when must they be filed?

The required planning documents and other required information and the submission dates for filing are described in the SGA.

§ 669.670 Who is eligible to receive services under the section 167 MSFW youth program?

Disadvantaged youth, ages 14 through 21, who are individually eligible or are members of eligible families under the WIA sec. 167 MSFW program may receive these services.

§ 669.680 What activities and services may be provided under the MSFW youth program?

(a) Based on an evaluation and assessment of the needs of MSFW youth participants, grantees may provide activities and services to MSFW youth that include:

(1) Intensive services and training services, as described in §§669.400 and 669.410 of this part;

(2) Life skills activities which may include self and interpersonal skills development;

(3) Community service projects;

(4) Small business development technical assistance and training in conjunction with entrepreneurial training;

(5) Supportive services; and

(b) Other activities and services that conform to the use of funds for youth activities described in 20 CFR part 664.

PART 670—THE JOB CORPS UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

Subpart A—Scope and Purpose

Sec.

670.100 What is the scope of this part?

670.110 What is the Job Corps program?

670.120 What definitions apply to this part?

670.130 What is the role of the Job Corps Director?

Subpart B—Site Selection and Protection and Maintenance of Facilities

670.200 Who decides where Job Corps centers will be located?

670.210 How are center facility improvements and new construction handled?

Sec. 670.220 Is the Secretary responsible for protection and maintenance of center facilities?

Subpart C—Funding and Selection of Service Providers

670.300 What entities are eligible to receive funds to operate centers and provide training and operational support services?

670.310 How are entities selected to receive funding?

670.320 What are the requirements for award of contracts and payments to Federal agencies?

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

670.400 Who is eligible to participate in the Job Corps program?

670.410 Are there additional factors which are considered in selecting an eligible applicant for enrollment?

670.420 Are there any special requirements for enrollment related to the Military Selective Service Act?