

be a subrecipient. SDA grant recipients and JTPA title III substate grantees are particular types of subrecipients.

*Substate grantee (SSG)* means that agency or organization selected to administer programs pursuant to section 312(b) of the Act. The substate grantee is the entity that receives JTPA title III funds for a substate area directly from the Governor.

*Technical assistance* is a facet of capacity building which may include but is not limited to information sharing, dissemination and training on program models and job functions; peer-to-peer networking and problem solving; guides; and interactive communication technologies.

*Title*, as used in this chapter, means a title of the Act, unless the text of the regulation specifically indicates otherwise.

*Vendor* means an entity responsible for providing generally required goods or services to be used in the JTPA program. These goods or services may be for the recipient's or subrecipient's own use or for the use of participants in the program. Distinguishing characteristics of a vendor include items such as: Providing the goods and services within normal business operations; providing similar goods or services to many different purchasers, including purchasers outside the JTPA program; and operating in a competitive environment. A vendor is not a subrecipient and does not exhibit the distinguishing characteristics attributable to a subrecipient, as defined above. Any entity directly involved in the delivery of program services not available to the general public, with the exception of an employer providing on-the-job training, shall be considered a subrecipient rather than a vendor.

*Wagner-Peyser Act* means 29 U.S.C. 49, et seq.

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**PART 627—GENERAL PROVISIONS GOVERNING PROGRAMS UNDER TITLES I, II, AND III OF THE ACT**

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### Subpart A—Scope and Purpose

#### § 627.100 Scope and purpose of this part 627.

(a) This part sets forth requirements for implementation of programs under titles I, II, and III of the Job Training Partnership Act.

(b) Subpart B provides general program requirements that apply to all programs under the titles I, II, and III of the Act, except as provided elsewhere in the Act or this chapter. These requirements include the Governor/Secretary agreement, the non-discrimination and nonsectarian activity provisions, coordination provisions with Higher Education Act programs, and the prohibitions on public service employment, relocation assistance, displacement, and employment generating activities. This subpart also sets forth comprehensive rules for on-the-job training for JTPA participants as well as for work experience.

(c) Subpart C sets forth requirements for allowable payments to JTPA participants.

(d) Subpart D establishes the administrative and financial standards and requirements that apply to funds received under the Act.

(e) Subpart E establishes the procedures that apply to the handling of noncriminal complaints under the Act at the Governor, the SDA, and title III SSG levels.

(f) Subpart F establishes the procedures that apply to the filing, handling, and review of complaints at the Federal level.

(g) Subpart G sets forth the provisions that apply to the sanctions and corrective actions that may be imposed by the Secretary for violations of the Act, regulations, or grant terms and conditions.

(h) Subpart H sets forth procedures that apply to hearing by the Office of the Administrative Law Judges.

**Subpart B—Program Requirements**

**§ 627.200 Governor/Secretary agreement.**

(a)(1) To establish a continuing relationship under the Act, the Governor and the Secretary shall enter into a Governor/Secretary agreement. The agreement shall consist of a statement assuring that the State shall comply with (i) the Job Training Partnership Act and all applicable rules and regulations and (ii) the Wagner-Peyser Act and all applicable rules and regulations. The agreement shall specify that guidelines, interpretations, and definitions, adopted and issued by the Governor and identified pursuant to section 124 of the Act, shall, to the extent that they are consistent with the Act and applicable rules and regulations, be accepted by the Secretary.

(2) Either the Governor or the Secretary may seek a modification, revision, or termination of the agreement at any time, to be effective at the end of a program year.

(b) Except as provided at part B of title III of the Act and part 631, subpart G, of this chapter, the State shall be the grant recipient of JTPA funds awarded under titles I, II, and III.

**§ 627.201 Waivers.**

(a)(1) The Governor may request, and the Secretary may grant, a waiver of specific provisions of these regulations to the extent that such request is consistent with the provisions of the Act.

(2) In requesting a waiver under paragraph (a)(1) of this section, the Governor shall demonstrate how it will either improve the targeting of services to the hard to serve, increase the level of basic and occupational skills training provided by the JTPA program in the State, contribute to the provision of academic enrichment services to youth, promote coordination of JTPA programs with other human resource programs, or substantially improve the job placement outcomes of the JTPA program.

(3) Waivers granted by the Secretary shall be effective for no more than four years from the date the waiver is granted.

**§ 627.205 Public service employment prohibition.**

No funds available under titles I, II-A, II-C, or III-A of the Act may be used for public service employment (sections 141(p) and 314(d)(2)).

**§ 627.210 Nondiscrimination and non-sectarian activities.**

(a)(1) Recipients, SDA grant recipients, title III substate grantees, and other subrecipients shall comply with the nondiscrimination provisions of section 167 of the Act.

(2) Nondiscrimination and equal opportunity requirements and procedures, including complaint processing and compliance reviews, are governed by the provisions of 29 CFR part 34 and are administered and enforced by the DOL Directorate of Civil Rights.

(3) Funds may be used to meet a recipient's or subrecipient's obligation to provide physical and programmatic accessibility and reasonable accommodation in regard to the JTPA program as required by Section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990.

(b) The employment or training of participants in sectarian activities is prohibited.

**§ 627.215 Relocation.**

(a) No funds provided under the Act shall be used, or proposed for use, to encourage or to induce the relocation of an establishment, or part thereof, that result in the loss of employment for any employee or such establishment at the original location.

(b) For 120 days after the commencement or the expansion of commercial operations of a relocating establishment, no funds provided under this Act shall be used for customized or skill training, on-the-job training, or company-specific assessments of job applicants or employees, for any relocating establishment or part thereof at a new, or expanded location, if the relocation of such establishment or part thereof results in a loss of employment for any employee of such establishment at the original location.

(c) For the purposes of this section, *relocating establishment* means a business entity, including a successor-in-

interest, which is moving any operations from a facility in one labor market area within the United States and its territories to a new or expanding facility in another labor market area. For the purposes of this section, a labor market area is an area within which individuals can readily change employment without changing their place of residence.

(d) *Pre-award review.* To verify that an establishment which is new or expanding is not, in fact, relocating employment from another area, standardized pre-award review procedures developed by the State shall be completed and documented jointly by the service delivery area or substate grantee and the establishment as a prerequisite to JTPA assistance. The review should include names under which the establishment does business, including successors-in-interest; the name, title, and address of the company official certifying the information; the name and address of the facility in the other geographic location which is being closed or from which business is being transferred; a statement from the employer about job losses at that location; the nature of the products or business being transferred; the date the facility will commence or expand operations, and whether JTPA assistance is sought in connection with past or impending job losses at other facilities.

(e) *Violations and sanctions.* The Department will promptly review and take appropriate action with regard to alleged violations of the provisions of paragraphs (a) and (b) of this section. Procedures for the investigation and resolution of the violations are provided for under subpart F of this part. Sanctions and remedies are provided for under subpart G of this part.

**§ 627.220 Coordination with programs under title IV of the Higher Education Act including the Pell grant program.**

(a) *Coordination.* Financial assistance programs under title IV of the Higher Education Act of 1965, as amended (HEA) (the Pell Grant program, the Supplemental Education Opportunity Grant program, the Work-study program, and Federal loan programs such as Federal Perkins Loans, Federal

Stafford Loans and Federal Direct Stafford Loans) provide student financial aid and are available to JTPA participants enrolling in postsecondary level education programs. SDA's and title III SSG's shall establish coordination procedures and contractual safeguards to ensure that JTPA funds are used in addition to funds otherwise available in the area and are coordinated with these funding sources.

(b) *Affordable programs.* (1) The SDA shall assist the participant early in the objective assessment, as appropriate, to establish eligibility for Pell Grants, student loans and other forms of financial aid.

(2) The SDA or SSA shall record in the ISS or participant record the participant's training-related financial assistance needs and the mix of JTPA and other funds, including Pell Grant funds (sections 141(b), 107(b), 205(b) and 265(b)).

(3) The SDA shall ensure, to the extent practicable, that available Federal, State, and local resources are coordinated sufficiently to meet the training and education-related costs of services, so that the participant can afford to complete the agreed-upon program successfully.

(4) Participants shall not be required to apply for or access student loans, or incur personal debt as a condition of JTPA participation.

(c) *Information sharing.* To prevent duplication of funding and to streamline the tracking of the participant's financial needs and use of funds when HEA, title IV programs are involved, contracts and agreements with educational institutions shall require the educational institution's financial aid officer to inform the SDA's/SSG's of the amounts and disposition of any HEA, title IV awards and other types of financial aid to each JTPA participant awarded after the enrollment of the participant, as part of a continuing, regular information sharing process (section 141(b)).

**§ 627.225 Employment generating activities.**

(a)(1) No funds available under the Act shall be used for employment generating activities, economic development activities, investment in revolving loan funds, capitalization of businesses, investment in contract bidding resource centers, or similar activities.

(2) No funds available under titles I, II, or III of the Act shall be used for foreign travel for employment generating activities, economic development activities, or similar activities.

(b) JTPA funds may be used for normal employer outreach and job development activities including, but not limited to: contacts with potential employers for the purpose of placement of JTPA participants; participation in business associations (such as chambers of commerce); JTPA staff participation on economic development boards and commissions, and work with economic development agencies, to provide information about JTPA and to assist in making informed decisions about community job training needs; subscriptions to relevant publications; general dissemination of information on JTPA programs and activities; labor market surveys; and development of on-the-job training (OJT) opportunities, as defined in §627.240; and other allowable JTPA activities in the private sector.

**§ 627.230 Displacement.**

(a) No currently employed worker shall be displaced by any participant (including partial displacement such as a reduction in the hours of non-overtime work, wages, or employment benefits).

(b) No participant shall be employed or job opening filled: (1) When any other individual is on layoff from the same or any substantially equivalent job, or

(2) When the employer has terminated any regular employee without cause or otherwise reduced its workforce with the intention of filling the vacancy so created by hiring a participant whose wages are subsidized under the Act.

(c) *Violations and sanctions.* The Department will promptly review and take appropriate action with regard to

alleged violations of the provisions of paragraphs (a) and (b) of this section. Procedures for the investigation and resolution of violations are provided for under subpart F of this part. Sanctions and remedies are provided for under subpart G of this part.

**§ 627.235 General program requirements.**

(a) The requirements set forth in sections 141, 142 and 143 of the Act apply to all programs under titles I, II, and III of the Act, except as provided elsewhere in the Act.

(b) Recipients shall ensure that an individual enrolled in a JTPA program meets the requirements of section 167(a)(5) of the Act, Section 3 of the Military Selective Service Act (50 U.S.C. App. 453) and other requirements applicable to programs funded under the specific section or title of the Act under which the participant is enrolling (section 604).

(c) Recipients shall ensure that individuals are enrolled within 45 days of the date of eligibility determination or a new eligibility determination (including new application, if necessary) shall be made, except that eligible summer program applicants under title II-B may be enrolled within 45 days into a summer youth enrollee pool, and no subsequent eligibility determination need be made prior to participation during the period of that summer program. In addition, the 45-day enrollment requirement shall not apply for individuals who have a valid certificate of continuing eligibility under the title III program, as described in §631.3 and §631.53 of this chapter.

(d) Programs operated under titles I, II, and III of the Act are not subject to the provisions of 29 CFR part 97, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," except as otherwise explicitly provided in this chapter.

(e) If a recipient or SDA imposes a requirement that is in addition to the provisions of the Act and these regulations relating to the administration and operation of programs funded by the Act, the recipient or SDA shall identify the requirement as a State- or

SDA-imposed requirement (section 124).

**§ 627.240 On-the-job training.**

(a) *General*—(1) *On-the-job training* (OJT) means training by an employer in the private or public sector given to a participant who, after objective assessment, and in accordance with the ISS, has been referred to and hired by the employer following the development of an agreement with the employer to provide occupational training in exchange for reimbursement of the employer's extraordinary costs. On-the-job training occurs while the participant is engaged in productive work which provides knowledge and skills essential to the full and adequate performance of the job.

(2) This does not preclude a participant who has been trained by one employer from ultimately being placed in a comparable training-related position with another employer.

(3) On-the-job training may be sequenced with or accompanied by other types of training such as classroom training or literacy training.

(b) *Duration of OJT*. (1) OJT authorized for a participant shall be limited to a period not in excess of that required for the participant to acquire the skills needed for the OJT position. Except as described in paragraph (b) (3) of this section, the period of reimbursement to the employer under an OJT agreement shall not exceed 6 months of training.

(2) The 6-month duration of OJT may be expressed as a number of hours, days, or weeks the participant is expected to work in a 6-month period if the participant works full-time.

(3) In the event that a participant's regular employment is less than full-time and less than 500 hours of OJT has occurred by the end of 6 months, that participant may remain in OJT until 499 hours OJT hours have occurred.

(4)(i) Recipients shall develop policies and procedures for determining the average training duration for occupations including to reflect an individual participant's need for additional training time, or reduction in training time to reflect the individual participant's partial acquisition of needed skills. (In no case should an individual who is fully

skilled in an occupation be placed in OJT in that occupation.)

(ii) In determining the average training time, consideration should be given to recognized reference materials, such as the "Dictionary of Occupational Titles" (DOT) and employer training plans. Such materials need not be limited to the DOT, however.

(5) On-the-job training is encouraged, but not required, in all occupations with significant training content, particularly in higher-skill occupations appropriate to the participant's needs. Training plans may be developed that recognize the full duration of the OJT period necessary for the full and adequate performance of the job, but the period of reimbursement may not exceed the duration in paragraph (a)(1) or (a)(2) of this section.

(6) When the OJT period in a given occupation for a participant for whom the ISS identifies OJT as appropriate varies from the average for that occupation, the basis for the variation shall be recorded in the ISS.

(c) *On-the-job training payments to employers*. (1) On-the-job training payments to employers are deemed to be in compensation for the extraordinary costs associated with training participants and in compensation for the costs associated with the lower productivity of such participants. Employers shall not be required to document such extraordinary costs or lower productivity (section 141(g)(1)).

(2)(i) On-the-job training payments to employers shall not, during the period of such training, average more than 50 percent of the wages paid by the employer to OJT participants.

(ii) On-the-job training payments to employers may be based upon scheduled raises or regular pay increases.

(iii) On-the-job training payments may not be based on overtime, shift differential, premium pay and other nonregular wages paid by the employer to participants.

(iv) On-the-job training payments may not be based upon periods of time such as illness, holidays, plant downtime or other events in which no training occurs.

(3) Employers which provide classroom or vestibule training to meet the

specific training needs of JTPA participants to equip them with education and knowledge necessary to the OJT occupation may be separately reimbursed for training costs, such as instructors and training material.

(d) *On-the-job training agreements.* (1) Each OJT agreement shall, at a minimum, specify the occupation(s) for which training is to be provided, the duration of the training, the number of participants to be trained in each occupation, wage rates to be paid, the rate of reimbursement, the maximum amount of reimbursement, a job description or training outline that reflects what the participant will learn, and any other separate classroom training that may be provided.

(2) The agreement shall provide that the employer will maintain and make available time and attendance, payroll and other records to support amounts reimbursed under OJT contracts.

(e) *Labor standards.* OJT participants shall be compensated by the employer at the same rates, including periodic increases, as similarly situated employees, but in no event less than the higher of the minimum wage specified under the Fair Labor Standards Act of 1938, as amended or the applicable State or local minimum wage. Participants must receive the same benefits and have the same working conditions as similarly situated employees.

(f) *Suitability of participants.* (1) Only those participants who have been assessed and for whom OJT has been determined as an appropriate activity in the participant's ISS may be referred to an employer for participation in OJT.

(2) An individual referred to the JTPA program by an employer may be enrolled in an OJT program with such employer only upon completion of the objective assessment and individual service strategy in which OJT with such employer has been determined to be an appropriate activity and only if the employer has not already hired such individual.

(3) OJT with the participant's previous or current employer in the same, a similar, or an upgraded job is not permitted.

(g) *Monitoring.* (1) OJT agreements shall be monitored periodically on-site

by the entity issuing the contract to assure that the validity and propriety of amounts claimed for reimbursement are substantiated by payroll and time and attendance records and that the training is being provided as specified in the agreement.

(2) Brokering contractors shall conduct on-site monitoring of the OJT employers and other subcontractors to verify compliance with subcontract terms before making payments.

(3) Nothing in this paragraph (g) shall relieve recipients and SDA's from responsibility for monitoring expenditures under the Act.

(h) *Employer eligibility.* (1) OJT agreements shall not be entered into with employers which, under previous agreements, have exhibited a pattern of failing to provide OJT participants with continued long-term employment as regular employees with wages, benefits and working conditions at the same level and to the same extent as similarly situated employees. This prohibition does not apply to OJT agreements for youth in the program under title II-B who are returning to school.

(2) Governors shall issue procedures and criteria to implement the requirement in paragraph (h)(1) of this section, which shall specify the duration of the period of loss of eligibility. The procedures and criteria shall provide that situations in which OJT participants quit voluntarily, are terminated for cause, or are released due to unforeseeable changes in business conditions will not necessarily result in termination of employer eligibility.

(i) *Brokered OJT.* Each agreement with an OJT employer that is written by a brokering contractor (not written directly by the SDA/SSA or recipient) shall specify and clearly differentiate the services to be provided by the brokering contractor (including but not limited to outreach, recruitment, training, counseling, assessment, placement, monitoring, and followup), the employer and other agencies and subcontractors, including services provided with or without cost by other agencies or subcontractors.

(j) *Youth OJT.* OJT conducted under title II-C shall meet the requirements of subpart H of part 628 of this chapter (628.804), as well as the requirements of

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this section. Where OJT is provided to youth concurrently enrolled under titles II-B and II-C, the source of funding for the OJT shall govern which requirements apply.

(k) *Employment and employee leasing agencies.*

(1) *Definition.* The terms *employment agency* and *employee leasing agency* mean an employer that provides regular, on-going employment (*i.e.*, not probationary, temporary, or intermittent employment) in a specific occupation and, for a fee, places employees at the worksite of another employer to perform work for such employer.

(2) Employment and employee leasing agencies that meet the other requirements of this section may be eligible for OJT agreements when the agreement specifies the source of training and specifies that the payments are for the extraordinary training costs of the entity providing the training.

**§ 627.245 Work experience.**

(a) *Definition.—Work Experience* means a short-term or part-time training assignment with a public or private nonprofit organization for a participant who needs assistance in becoming accustomed to basic work requirements. It is prohibited in the private for-profit sector.

(b) *Suitability.* Work experience should be designed to promote the development of good work habits and basic work skills.

(c) *Duration of work experience.* Participation in work experience shall be for a reasonable length of time, based on the needs of the participant. The duration of work experience shall be recorded in the participant's ISS.

(d) *Combination with other services.* Work experience under titles II-A and C shall be accompanied either concurrently or sequentially by other services designed to increase the basic education and/or occupational skills of the participant, as recorded in the ISS.

(e) Work experience is not an allowable activity under title III of the Act. (Sections 204(b) and (c), 253(a), and 264 (c) and (d).)

**§ 627.250 Interstate agreements.**

The Secretary hereby grants authority to the several States to enter into

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interstate agreements and compacts in accordance with section 127 of the Act and, as specified in § 627.420(g), Procurement.

**Subpart C—Payments, Supportive Services, and Benefits and Working Conditions**

**§ 627.300 Scope and purpose.**

This subpart sets forth requirements for allowable payments to JTPA participants under titles I and II. These include needs-based payments under title II, incentive and bonus payments under title II, work-based training payments under title II, and payments for combined activities under title II. Requirements for supportive services under titles I, II, and III, including financial assistance and needs-related payments, are also included in this subpart. This subpart also sets forth rules for benefits and working conditions for JTPA participants. These include requirements for: Compliance with applicable labor laws; workers' compensation coverage or medical and accident insurance where there is no State workers' compensation coverage; and working conditions which are not detrimental to the participant's health and safety.

**§ 627.305 Payments.**

(a)(1) *General.* Allowable types of payments which may be made to participants are: Needs-based payments for eligible individuals in programs under title II; incentive and bonus payments for participants in title II programs; work-based training payments for work experience, entry employment experience, internships and other work-based training activities; payments for participants in title II-B activities; and training payments for combined activities in title II programs. These payments shall be made in accordance with paragraphs (b) through (f) of this section.

(2) A participant shall receive no payments for training activities in which the participant fails to participate without good cause (section 142(a)(1)).

(3) The SDA shall ensure to the extent possible that similarly situated participants receive similar payments.

(4) Payments to participants, broadly defined for this subsection as all funds distributed to participants except OJT wages, shall not be considered as income for the purposes of determining eligibility for and the amount of income transfer and in-kind aid furnished under any Federal or federally assisted program based on need, other than as provided under the Social Security Act (section 142(b)).

(5) The SDA is responsible for meeting any applicable Internal Revenue Service and Fair Labor Standards Act requirements (section 142(a)(3)).

(6) An SDA may set fixed levels for any non-wage payment.

(b) *Needs-based payments.* (1) Participants in programs funded under title II may receive needs-based payments when such payments are necessary to enable the individual to participate in training programs. Payments shall be made in accordance with a locally developed policy which is included in the job training plan approved by the Governor.

(2) The individual determination of participants' needs-based payments and the amount of such payments shall be based upon the results of the continuing objective assessment and determined in accordance with a locally developed policy. The provisions and amount of such payments shall be recorded in the ISS.

(c) *Incentive and bonus payments.* Participants in programs funded under title II may receive incentive and bonus payments based on their attendance and performance in accordance with a locally developed policy. The policy shall be described in the job training plan approved by the Governor and shall include a specification of the requirements for the receipt of such payments and the level of payments.

(d) *Work-based training payments.* Individuals participating in work experience, in entry employment experience programs, in limited internships for youth in the private sector, or in other work-based training activities under title II of the Act may receive work-based training payments which may be wages.

(e) Summer participants may receive training payments for participation in activities under title II-B.

(f) *Training payments for combined activities.* For title II programs, participants in one of the activities described in paragraph (d) of this section for which work-based training payments are payable for more than 50 percent of the participant's time, including classroom training, may also receive training payments for hours of participation in classroom training.

#### § 627.310 Supportive services.

(a)(1) The SDA or SSG shall develop a policy on supportive services in accordance with the definition at section 4(24) of the Act. This policy shall be included in the job training plan approved by the Governor (section 4(24)). Supportive services may be provided to participants through in-kind or cash assistance, or by arrangement with another human service agency when necessary to enable an individual who is eligible for training under a JTPA assisted program, but who cannot afford to pay for such services, to participate in such JTPA-assisted program.

(2) In the event that an SDA or SSG adopts a policy of providing a fixed reimbursement for a particular supportive service to all participants, it shall, as part of its policy, state the rationale for its choice and the fixed amounts it has adopted.

(b) Limited supportive services may be provided to applicants in order to permit them to complete the application process.

(c) Necessary supportive services shall be recorded in a participant's ISS under title II or should be recorded in a participant's individual readjustment plan under title III. When supportive services are provided in accordance with paragraph (b) of this section, information on any supportive service provided may be maintained for future inclusion in an ISS.

(d) The SDA or SSG shall ensure, to the extent possible, that similarly situated participants receive similar supportive services.

(e) For title II participants, necessary supportive services (with the exception of financial assistance) may be provided for up to one year following termination as post-termination or followup services (sections 4(24), 204(b)(2)(J), and 204(c)(4)). For title III

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participants, the provisions at section 314(c)(15) of the Act shall apply.

(f) An SDA or SSG may set fixed levels of benefit for any supportive service.

(g)(1) For purposes of title II, financial assistance is defined as a general supportive service payment for the purpose of retaining participants in training.

(2) Financial assistance payments may be considered to be necessary for participation in training for title II participants, *i.e.*, a separate, individual determination of need is not necessary.

(h) *Needs-related payments.* The requirements pertaining to needs-related payments provided for under section 315(b) under title III of the Act, are described in part 631 of this chapter.

## § 627.315 Benefits and working conditions.

(a) In the development and conduct of programs funded under the Act, SDA's and SSG's shall ensure that participants are not assigned to work for employers which do not comply with applicable labor laws, including wage and hour, occupational health and safety, and child labor laws (29 CFR part 570).

(b) To the extent that a State workers' compensation law is applicable, workers' compensation benefits in accordance with such law shall be available with respect to injuries suffered by participants. Where a State's workers' compensation law is not applicable, recipients and subrecipients shall secure insurance coverage for injuries suffered by such participants in all JTPA work-related activities. Income maintenance coverage (e.g., contributions for unemployment compensation), is not required for participants (section 143(a)(3)).

(c) Where a participant is engaged in activities not covered under the Occupational Safety and Health Act of 1970, as amended, the participant shall not be required or permitted to work, be trained, or receive services in buildings or surroundings or under working conditions which are unsanitary, hazardous, or dangerous to the participant's health or safety. A participant employed or trained for inherently dangerous occupations, e.g., fire or po-

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lice jobs, shall be assigned to work in accordance with reasonable safety practices (section 143(a)(2)).

## Subpart D—Administrative Standards

### § 627.400 Scope and purpose.

This subpart establishes the administrative and financial standards and requirements that apply to funds received under the Act.

### § 627.405 Grant agreement and funding.

(a)(1) Pursuant to § 627.200 of this part and the Governor/Secretary agreement, each program year there will be executed a grant agreement signed by the Governor or the Governor's designated representative and the Secretary or the Secretary's designated representative (Grant Officer).

(2) The grant agreement described in paragraph (a)(1) of this section shall be the basis for Federal obligation of funds for the program year for programs authorized by titles I, II, and III, including any title III discretionary projects awarded to the State, and such other funds as the Secretary may award under the grant.

(b) *Funding.* The Secretary shall allot funds to the States in accordance with sections 162, 202, 252, 262, and 302 of the Act. The Secretary shall obligate such allotments through Notices of Obligation.

(c) Pursuant to instructions issued by the Secretary, additional funds may be awarded to States for the purpose of carrying out the administrative activities described in section 202(c)(1)(A) when a State receives an amount under such section that is less than \$500,000 (section 453(d)).

(d) *Termination.* Each grant shall terminate when the period of availability for expenditure (funding period), as specified in section 161(b) of the Act, has expired and shall be closed in accordance with § 627.485, of this part, Closeout.

### § 627.410 Reallotment and reallocation.

(a)(1) The Governor shall reallocate title II-A and II-C funds among service delivery areas within the State in accordance with the provisions of section

109(a) of the Act. The amount to be re-allocated, if any, shall be based on SDA obligations of the funds allocated separately to each SDA for title II-A or II-C programs.

(2) The Governor shall not establish reallocation requirements that are inconsistent with the provisions of section 109(a) of the Act.

(b) The Secretary shall reallocate title II-A and II-C funds among the States in accordance with the provisions of section 109(b) of the Act. The amounts to be reallocated, if any, shall be based on State obligations of the funds allotted separately to each State for title II-A or II-C programs, excluding funds allotted under section 202(c)(1)(D) and the State's obligation of such funds.

(c) Title III funds shall be reallocated by the Secretary in accordance with section 303 of the Act.

**§ 627.415 Insurance.**

(a) *General.* Each recipient and subrecipient shall follow its normal insurance procedures except as otherwise indicated in this section and §627.465, Property Management Standards.

(b) DOL assumes no liability with respect to bodily injury, illness, or any other damages or losses, or with respect to any claims arising out of any activity under a JTPA grant or agreement whether concerning persons or property in the recipient's or any subrecipient's organization or that of any third party.

**§ 627.420 Procurement.**

(a) *General.* (1) For purposes of this section, the term *procurement* means the process which leads to any award of JTPA funds.

(2) The Governor, in accordance with the minimum requirements established in this section, shall prescribe and implement procurement standards to ensure fiscal accountability and prevent waste, fraud, and abuse in programs administered under this Act.

(3) When procuring property and services, a State shall follow the same policies and procedures it uses for procurements from its non-Federal funds, provided that the State's procurement procedures also comply with the minimum requirements of this section.

(4) Each subrecipient shall use its own procurement procedures which reflect applicable State and local laws and regulations, provided that the subrecipient's procurement procedures also comply with the requirements of this section and the standards established by the Governor, pursuant to paragraph (a)(2) of this section.

(5) States and subrecipients shall not use funds provided under JTPA to duplicate facilities or services available in the area (with or without reimbursement) from Federal, State, or local sources, unless it is demonstrated that the JTPA-funded alternative services or facilities would be more effective or more likely to achieve performance goals (sections 107(b) and 141(h)).

(6) Awards are to be made to responsible organizations possessing the demonstrated ability to perform successfully under the terms and conditions of a proposed subgrant or contract. A determination of demonstrated ability shall be done in accordance with the requirements contained in §627.422 (b) and (d).

(b) *Competition.* (1) Each State and subrecipient shall conduct procurements in a manner which provides full and open competition. Some of the situations considered to be restrictive of competition include, but are not limited to:

(i) Placing unreasonable requirements on firms or organizations in order for them to qualify to do business;

(ii) Requiring unnecessary experience and excessive bonding;

(iii) Noncompetitive pricing practices between firms or organizations or between affiliated companies or organizations;

(iv) Noncompetitive awards to consultants that are on retainer contracts;

(v) Organizational conflicts of interest;

(vi) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement;

(vii) Overly restrictive specifications; and

(viii) Any arbitrary action in the procurement process.

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(2) Each State and subrecipient shall have written procedures for procurement transactions. These procedures shall ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured (including quantities). Such description shall not, in competitive procurements, contain features which unduly restrict competition; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(3) Each State and subrecipient shall ensure that all prequalified lists of persons, firms, or other organizations which are used in acquiring goods and services are current and include sufficient numbers of qualified sources to ensure maximum open and free competition.

(c) *Conflict of interest.* (1) Each recipient and subrecipient shall maintain a written code of standards of conduct governing the performance of persons engaged in the award and administration of JTPA contracts and subgrants. To the extent permitted by State or local law or regulation, such standards of conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the awarding agency's officers, employees, or agents, or by awardees or their agents.

(2) *Staff conflict of interest.* Each recipient and subrecipient shall ensure that no individual in a decisionmaking capacity shall engage in any activity, including participation in the selection, award, or administration of a subgrant or contract supported by JTPA funds if a conflict of interest, real or apparent, would be involved.

(3) *PIC conflict of interest.* (i) A PIC member shall not cast a vote, nor participate in any decisionmaking capacity, on the provision of services by such member (or any organization which that member directly represents), nor on any matter which would provide any direct financial benefit to that member.

(ii) Neither membership on the PIC nor the receipt of JTPA funds to provide training and related services shall

be construed, by itself, to violate provisions of section 141(f) of the Act or § 627.420.

(4) A conflict of interest under paragraphs (c) (2) and (3) of this section would arise when:

(i) The individual,

(ii) Any member of the individual's immediate family,

(iii) The individual's partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm or organization selected for award.

(5) The officers, employees, or agents of the agency and PIC members making the award will neither solicit nor accept gratuities, favors, or anything of monetary value from awardees, potential awardees, or parties to subagreements. States and subrecipients may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.

(d) *Methods of procurement.* (1) Each State and subrecipient shall use one of the following methods of procurement, as appropriate for each procurement action:

(i) *Small purchase procedures*—simple and informal procurement methods for securing services, supplies, or other property that do not cost more than \$25,000 in the aggregate. Recipients and subrecipients shall not break down one purchase into several purchases merely to be able to use small purchase procedures. The Governor shall establish standards for small purchase procedures to ensure that price or rate quotations will be documented from an adequate number of qualified sources.

(ii) *Sealed bids (formal advertising)*—bids are publicly solicited procurements for which a firm-fixed-price award (lump sum or unit price) or other fixed-price arrangement is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The Governor shall establish standards for sealed bids which include requirements that invitations for bids be publicly advertised, and that bids be solicited from an adequate number of organizations.

(iii) *Competitive proposals*—normally conducted with more than one source submitting an offer and either a fixed-price or cost-reimbursement type award is made. The Governor shall establish standards for competitive proposals which include requirements for the establishment of a documented methodology for technical evaluations and award to the responsible offeror whose proposals are most advantageous to the program with price, technical, and other factors considered.

(iv) *Noncompetitive proposals (sole source)*—procurement through solicitation of a proposal from only one source, the funding of an unsolicited proposal, or when, after solicitation of a number of sources, competition is determined inadequate. Each State and subrecipient shall minimize the use of sole source procurements to the extent practicable, but in every case the use of sole source procurements shall be justified and documented. On-the-job training (OJT) awards (except OJT brokering awards, which shall be selected competitively) and the enrollment of individual participants in classroom training may be sole sourced. For all other awards, procurement by noncompetitive proposals may be used only when the award is infeasible under small purchase procedures, sealed bids, or competitive proposals and one of the following circumstances applies:

(A) The item or service is available only from a single source;

(B) The public exigency or emergency need for the item or service does not permit a delay resulting from competitive solicitation;

(C) For SDAs, SSGs and subrecipients, the awarding agency authorizes noncompetitive proposals; for States, the noncompetitive proposal is approved through the State's normal sole source approval process;

(D) After solicitation of a number of sources, competition is determined inadequate;

(2) *Pass Throughs*—The procurement rules do not apply to pass throughs of monies from any unit of State or local government (or SDA or SSG administrative entities) to other such units, such as a local educational agency or public housing authority. To qualify as

a pass through, the receiving entity must either further pass through the monies to another such entity or procure services in accordance with the procurement rules.

(e) *Cost or price analysis*. (1) Each recipient, in accordance with the minimum requirements established in this section, shall establish standards on the performance of cost or price analysis.

(2) Each recipient and subrecipient shall perform a cost or price analysis in connection with every procurement action, including modifications (except for modifications where a determination has been made that they do not have a monetary impact). The method and degree of analysis depends on the facts surrounding the particular procurement and pricing situation. At a minimum, the awarding agency shall make independent estimates before receiving bids or proposals. A cost analysis is necessary when the offeror is required to submit the elements of the estimated cost (e.g., as in the case of subrecipient relationships), when adequate price competition is lacking, and for sole source procurements, including modifications or change orders. A price analysis shall be used when price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation (including situations involving inadequate price competition and sole source procurements where a price analysis may be used in lieu of a cost analysis). When a cost analysis is necessary and there is inadequate price competition, the offeror shall certify that to the best of its knowledge and belief, the cost data are accurate, complete, and current at the time of agreement on price. Awards or modifications negotiated in reliance on such data should provide the awarding agency a right to a price adjustment to exclude any significant sum by which the price was increased because the awardee had knowingly submitted data that were not accurate, complete, or current as certified.

(3) JTPA procurements shall not permit excess program income (for nonprofit and governmental entities) or

excess profit (for private for-profit entities). If profit or program income is included in the price, the awarding agency shall negotiate profit or program income as a separate element of the price for each procurement in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit or program income, consideration shall be given to:

- (i) The complexity of the work to be performed;
- (ii) The risk borne by the awardee;
- (iii) The offeror's investment;
- (iv) The amount of subcontracting/subgranting;
- (v) The quality of the offeror's record of past performance;
- (vi) Industry profit rates in the surrounding geographical area for similar work; and
- (vii) Market conditions in the surrounding geographical area.

(4) Each recipient and subrecipient may charge to the agreement only those costs which are consistent with the allowable cost provisions of § 627.435 of this part, including the guidelines issued by the Governor, as required at § 627.435(i) of this part.

(5) The cost plus a percentage of cost method shall not be used.

(f) *Oversight.* (1) Each recipient and subrecipient shall conduct and document oversight to ensure compliance with the procurement standards, in accordance with the requirements of § 627.475 of this part, Oversight and monitoring.

(2) Each recipient and subrecipient shall maintain an administration system which ensures that vendors and subrecipients perform in accordance with the terms, conditions, and specifications of their awards.

(g) *Transactions between units of government.* (1) Except as provided in paragraph (g)(2) of this section, procurement transactions between units of State or local governments, or any other entities organized principally as the administrative entity for service delivery areas or substate areas, shall be conducted on a cost reimbursable basis. Cost plus type awards are not allowable.

(2) In the case of procurement transactions with schools that are a part of

these entities, such as State universities and secondary schools, when tuition charges or entrance fees are not more than the educational institution's catalogue price, necessary to receive specific training, charged to the general public to receive the same training, and for training of participants, the tuition and/ or entrance fee does not have to be broken out by items of cost.

(h) *Award provisions.* Each recipient and subrecipient agreement shall:

(1) Clearly specify deliverables and the basis for payment; and

(2) In the case of awards to subrecipients, contain clauses that provide for:

(i) Compliance with the JTPA regulations;

(ii) Assurance of nondiscrimination and equal opportunity as found in 29 CFR 34.20, Assurance required; duration of obligation; covenants.

(3) In the case of awards to vendors, contain clauses that provide for:

(i) Access by the recipient, the subrecipient, the Department of Labor, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records (including computer records) of the contractor or subcontractor which are directly pertinent to charges to the program, in order to conduct audits and examinations and to make excerpts, transcripts, and photocopies; this right also includes timely and reasonable access to contractor's and subcontractor's personnel for the purpose of interviews and discussions related to such documents;

(4) In the case of awards to both subrecipients and vendors, contain clauses that provide for:

(i) Administrative, contractual, or legal remedies in instances where contractors/subgrantees violate or breach agreement terms, which shall provide for such sanctions and penalties as may be appropriate;

(ii) Notice of 29 CFR 97.34 requirements pertaining to copyrights (agreements which involve the use of copyrighted materials or the development of copyrightable materials);

(iii) Notice of requirements pertaining to rights to data. Specifically,

the awarding agency and the Department of Labor shall have unlimited rights to any data first produced or delivered under the agreement (agreements which involve the use/development of computer programs/ applications, or the maintenance of databases or other computer data processing program, including the inputting of data);

(iv) Termination for cause and for convenience by the awarding agency, including the manner by which the termination will be effected and the basis for settlement;

(v) Notice of awarding agency requirements and regulations pertaining to reporting;

(vi) Audit rights and requirements;

(vii) Payment conditions and delivery terms;

(viii) Process and authority for agreement changes; and

(ix) Provision against assignment;

(5) The Governor may establish additional clauses, as deemed appropriate, for State and subrecipient procurements.

(i) *Disputes.* (1) The Governor shall ensure that the recipient and each subrecipient have protest procedures to handle and resolve disputes relating to their procurements. A protester shall exhaust all administrative remedies with the subrecipient before pursuing a protest at a higher level.

(2) Violations of law will be handled in accordance with the requirements contained in §627.500(c).

(j) Each recipient and subrecipient shall maintain records sufficient to detail the significant history of a procurement. These records shall include, but are not necessarily limited to, the following: rationale for the method of procurement, selection of agreement type, awardee selection or rejection, and the basis for the agreement price.

**§ 627.422 Selection of service providers.**

(a) Service providers selected under titles I, II, and III of the Act shall be selected in accordance with the provisions of section 107 of the Act, except that section 107(d) shall not apply to training under title III.

(b) Consistent with the requirements of this section, the Governor shall establish standards to be followed by re-

ipients and subrecipients in making determinations of demonstrated performance, prior to the award of all agreements under titles I, II, and III of the Act. These standards shall comply with the requirements of this section, §627.420, of this part, Procurement, and section 164(a)(3) of the Act. The standards shall require that determinations of demonstrated performance will be in writing, and completed prior to the award of an agreement.

(c) Each recipient and subrecipient, to the extent practicable, shall select service providers on a competitive basis, in accordance with the standards established in §627.420(b) of this part, Procurement. When a State, SDA, SSG, or administrative entity determines that services other than intake and eligibility determination will be provided by its own staff, a determination shall be made of the demonstrated performance of the entity to provide the services. This determination: Shall be in writing; shall take into consideration the matters listed in paragraph (d) of this section; and may, if appropriate, be documented and described in the Job Training Plan, GCSSP, or EDWAA plan.

(d) Awards are to be made to organizations possessing the demonstrated ability to perform successfully under the terms and conditions of a proposed subgrant or contract. Where comparable proposals have been received from an offeror which has demonstrated performance and a high-risk recipient/subrecipient, and a determination has been made that both proposals are fundable, the award should be made to the offeror which has demonstrated performance, unless other factors dictate a contrary result. Determinations of demonstrated performance shall be in writing, and take into consideration such matters as whether the organization has:

(1) Adequate financial resources or the ability to obtain them;

(2) The ability to meet the program design specifications at a reasonable cost, as well as the ability to meet performance goals;

(3) A satisfactory record of past performance (in job training, basic skills training, or related activities), including demonstrated quality of training;

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reasonable drop-out rates from past programs; where applicable, the ability to provide or arrange for appropriate supportive services as specified in the ISS, including child care; retention in employment; and earning rates of participants;

(4) For title II programs, the ability to provide services that can lead to the achievement of competency standards for participants with identified deficiencies;

(5) A satisfactory record of integrity, business ethics, and fiscal accountability;

(6) The necessary organization, experience, accounting and operational controls; and

(7) The technical skills to perform the work.

(e) In selecting service providers to deliver services in a service delivery area/substate area, proper consideration shall be given to community-based organizations (section 107(a)). These community-based organizations, including women's organizations with knowledge about or experience in non-traditional training for women, shall be organizations which are recognized in the community in which they are to provide services. Where proposals are evenly rated, and one of these proposals has been submitted by a CBO, the tie breaker may go to the CBO.

(f) Appropriate education agencies in the service delivery area/substate area shall be provided the opportunity to provide educational services, unless the administrative entity demonstrates that alternative agency(ies) or organization(s) would be more effective or would have greater potential to enhance the participants' continued educational and career growth (section 107(c)). Where proposals are evenly rated, and one of these proposals has been submitted by an educational institution, the tie breaker shall go to the educational institution.

(g) In determining demonstrated performance of institutions/organizations which provide training, such performance measures as retention in training, training completion, job placement, and rates of licensure shall be taken into consideration.

(h) Service providers under agreements to conduct projects under sec-

tion 123(a)(2) shall be selected in accordance with the requirements of this section.

(i) The requirements of section 204(d)(2)(B) shall be followed in entering into agreements to provide services for older individuals funded under title II, part A.

(j) Additional requirements for selection of service providers by substate grantees are described at section 313(b)(6) of the Act and § 631.52 of this chapter.

(k) Amounts for service providers. Each SDA/SSG shall ensure that, for all services provided to participants through contracts, grants, or other agreements with a service provider, such contract, grant, or agreement shall include appropriate amounts necessary for administration and supportive services (section 108(b)(5)).

(l) When a State, SDA or SSG has a policy of awarding additional points to proposals received from such organizations as minority business enterprises and women-owned businesses, and this policy is generally applicable to its other funds, the State, SDA or SSG may apply this policy to the JTPA funds.

**§ 627.423 Funding restrictions for "high-risk" recipients and sub-recipients.**

(a) A recipient or subrecipient may be considered "high-risk" if an awarding agency determines that the recipient or subrecipient is otherwise responsible, but:

(1) Has a history of unsatisfactory performance;

(2) Is not financially stable;

(3) Has a management system which does not meet the management standards set forth in this part; or

(4) Has not conformed to terms and conditions of a previously awarded grant or subgrant.

(b) If the awarding agency determines that an award will be made to a "high-risk" recipient or subrecipient, then special funding restrictions that address the "high-risk" status may be included in the award. Funding restrictions may include, but are not limited to:

(1) Payment on a reimbursement basis;

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(2) Requiring additional and/or more detailed financial or performance reports;

(3) Additional monitoring;

(4) Requiring the recipient or subrecipient to obtain specific technical or management assistance; and/or

(5) Establishing additional prior approvals.

(c) If an awarding agency decides to impose such funding restrictions, the awarding official will notify the recipient or subrecipient as early as possible, in writing, of:

(1) The nature of the funding restrictions;

(2) The reason(s) for imposing them;

(3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions; and

(4) The method of requesting reconsideration of the restrictions imposed.

### § 627.424 Prohibition of subawards to debarred and suspended parties.

(a) No recipient or subrecipient shall make any awards or permit any awards at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs in accordance with the Department of Labor regulations at 29 CFR part 98.

(b) Recipients and subrecipients shall comply with the applicable requirements of the Department of Labor regulations at 29 CFR part 98.

### § 627.425 Standards for financial management and participant data systems.

(a)(1) *General.* The financial management system and the participant data system of each recipient and subrecipient 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, program management, and evaluation purposes (sections 165(a)(1) and (2), and 182).

(2) An awarding agency may review the adequacy of the financial management system and participant data system of any recipient/subrecipient as part of a preaward review or at any time subsequent to award.

(b) *Financial systems.* Recipients and subrecipients shall ensure that their own financial systems as well as those of their subrecipients provide fiscal control and accounting procedures that are:

(1) In accordance with generally accepted accounting principles applicable in each State including:

(i) Information pertaining to subgrant and contract awards, obligations, unobligated balances, assets, liabilities, expenditures, and income;

(ii) Effective internal controls to safeguard assets and assure their proper use;

(iii) A comparison of actual expenditures with budgeted amounts for each subgrant and contract;

(iv) Source documentation to support accounting records; and

(v) Proper charging of costs and cost allocation; and

(2) Sufficient to:

(i) Permit preparation of required reports;

(ii) Permit the tracing of funds to a level of expenditure adequate to establish that funds have not been used in violation of the applicable restrictions on the use of such funds;

(iii) As required by section 165(g), permit the tracing of program income, potential stand-in costs and other funds that are allowable except for funding limitations, as defined in § 627.480(f) of this part, Audits; and

(iv) Demonstrate compliance with the matching requirement of section 123(b)(2).

(c) *Applicant and participant data systems.* Each recipient and subrecipient shall ensure that records are maintained:

(1) Of each applicant for whom an application has been completed and a formal determination of eligibility or ineligibility made;

(2) Of each participant's enrollment in a JTPA-funded program in sufficient detail to demonstrate compliance with the relevant eligibility criteria attending a particular activity and with the restrictions on the provision and duration of services and specific activities imposed by the Act; and

(3) Of such participant information as may be necessary to develop and measure the achievement of performance standards established by the Secretary.

**§ 627.430 Grant payments.**

(a) Except as provided in paragraph (h)(2) of this section, JTPA grant payments shall be made to the Governor in accordance with the Cash Management Improvement Act of 1990 (31 U.S.C. 6501, *et seq.*), Department of Treasury regulations at 31 CFR part 205, and the State Agreement entered into with the Department of the Treasury.

(b) *Basic standard.* Except as provided in paragraphs (d) and (e) of this section, each recipient and subrecipient shall be paid in advance, provided it demonstrates the willingness and ability to limit advanced funds to the actual immediate disbursement needs in carrying out the JTPA program.

(c) *Advance payments.* To the maximum extent feasible, each subrecipient shall be provided advance payments via electronic funds transfer, following the procedures of the awarding agency.

(d) *Reimbursement.* (1) Reimbursement is the preferred method when the requirements in paragraph (b) of this section are not met.

(i) Each recipient shall submit requests for reimbursement in accordance with the provisions at 31 CFR part 205.

(ii) Each subrecipient shall submit requests for reimbursement in accordance with requirements established by the awarding agency.

(2) Each subrecipient shall be paid as promptly as possible after receipt of a proper request for reimbursement.

(e) *Working capital advance payments.* If a subrecipient cannot meet the criteria for advance payments described in paragraph (b) of this section, and the awarding agency has determined that reimbursement is not feasible because the subrecipient lacks sufficient working capital, the awarding agency may provide cash on a working capital advance payment basis. Under this procedure, the awarding agency shall advance cash to the subrecipient to cover its estimated disbursement needs for an initial period, generally geared to the subrecipient's disbursing cycle. In

no event may such an advance exceed 20 percent of the award amount. Thereafter, the awarding agency shall reimburse the subrecipient for its actual cash disbursements. The working capital advance method of payment shall not be used by recipients or subrecipients if the reason for using such method is the unwillingness or inability of the recipient or subrecipient to provide timely advances to the subrecipient to meet the subrecipient's actual cash disbursements.

(f) *Effect of program income, refunds, and audit recoveries on payment.* Each recipient and subrecipient shall disburse cash received as a result of program income, rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional cash payments.

(g) *Cash depositories.* (1) Consistent with the national goal of expanding the opportunities for minority business enterprises, each recipient and subrecipient is encouraged to use minority-owned banks (a bank which is at least 50 percent owned by minority group members). Additional information may be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230.

(2) A recipient or subrecipient shall not be required to maintain a separate bank account but shall separately account for Federal funds on deposit.

(h) *Interest earned on advances.* (1) An interest liability shall accrue on advance payments between Federal agencies and State governments, as provided by the Cash Management Improvement Act (31 U.S.C. 6501, *et seq.*) and implementing regulations at 31 CFR part 205.

(2) Each recipient and subrecipient shall account for interest earned on advances of Federal funds as program income, as provided at § 627.450 of this part, Program income.

**§ 627.435 Cost principles and allowable costs.**

(a) *General.* To be allowable, a cost shall be necessary and reasonable for the proper and efficient administration of the program, be allocable to the program, and, except as provided herein, not be a general expense required to

carry out the overall responsibilities of the Governor or a governmental sub-recipient. Costs charged to the program shall be accorded consistent treatment through application of generally accepted accounting principles appropriate to the JTPA program, as determined by the Governor.

(b) Whether a cost is charged as a direct cost or as an indirect cost shall be determined in accordance with the descriptions of direct and indirect costs contained in the OMB Circulars identified in DOL's regulations at 29 CFR 97.22(b).

(c) Costs allocable to another Federal grant, JTPA program, or cost category may not be shifted to a JTPA grant, subgrant, program, or cost category to overcome fund deficiencies, avoid restrictions imposed by law or grant agreements, or for other reasons.

(d) Applicable credits such as rebates, discounts, refunds, and overpayment adjustments, as well as interest earned on any of them, shall be credited as a reduction of costs if received during the same funding period that the cost was initially charged. Credits received after the funding period shall be returned to the Department as provided for at §627.490(b).

(e) The following costs are not allowable charges to the JTPA program:

(1) Costs of fines and penalties resulting from violations of, or failure to comply with, Federal, State, or local laws and regulations;

(2) Back pay, unless it represents additional pay for JTPA services performed for which the individual was underpaid;

(3) Entertainment costs;

(4) Bad debts expense;

(5) Insurance policies offering protection against debts established by the Federal Government;

(6) Contributions to a contingency reserve or any similar provision for unforeseen events;

(7) Costs prohibited by 29 CFR part 93 (Lobbying Restrictions) or costs of any salaries or expenses related to any activity designed to influence legislation or appropriations pending before the Congress of the United States; and

(8) Costs of activities prohibited in §627.205, Public service employment prohibition; §627.210, Nondiscrimina-

tion and nonsectarian activities; §627.215, Relocation; §627.225, Employment generating activities; and §627.230, Displacement, of this part.

(f)(1) The cost of legal expenses required in the administration of grant programs is allowable. Legal expenses include the expenses incurred by the JTPA system in the establishment and maintenance of a grievance system, including the costs of hearings and appeals, and related expenses such as lawyers' fees. Legal expenses does not include costs resulting from, and after, the grievance process such as fines and penalties, which are not allowable, and settlement costs, which are allowable to the extent that such costs included in the settlement would have been allowable if charged to the JTPA program at the time they were incurred.

(2) Legal services furnished by the chief legal officer of a State or local government or staff solely for the purpose of discharging general responsibilities as a legal officer are unallowable.

(3) Legal expenses for the prosecution of claims against the Federal Government, including appeals to an Administrative Law Judge, are unallowable.

(g) Costs of travel and incidental expenses incurred by volunteers are allowable provided such costs are incurred for activities that are generally consistent with section 204(c)(6) of the Act.

(h) Contributions to a reserve for a self-insurance program, to the extent that the type and extent of coverage and the rates and premiums would have been allowed had insurance been purchased to cover the risks, are allowable.

(i) The Governor shall prescribe and implement guidelines on allowable costs for SDA, SSG, and statewide programs that are consistent with the cost principles and allowable costs provisions of paragraphs (a) through (h) of this section and that include, at a minimum, provisions that specify the extent to which the following cost items are allowable or unallowable JTPA costs and, if allowable, guidelines on conditions or the extent of allowability, documentation requirements, and any prior approval requirements applicable to such cost items:

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(1) Compensation for personal services of staff, including wages, salaries, supplementary compensation, and fringe benefits;

(2) Costs incurred by the SJTCC, HRIC, PIC's, and other advisory councils or committees;

(3) Advertising costs;

(4) Depreciation and/or use allowances;

(5) Printing and reproduction costs;

(6) Interest expense;

(7) Expenditures for transportation and travel;

(8) Payments to OJT employers, training institutions, and other vendors;

(9) Fees or profits;

(10) Insurance costs, including insurance coverage for injuries suffered by participants who are not covered by existing workers' compensation, and personal liability insurance for PIC members;

(11) Acquisitions of capital assets;

(12) Building space costs, including rent, repairs, and alterations;

(13) Pre-agreement costs;

(14) Fund-raising activities;

(15) Professional services, including organizational management studies conducted by outside individuals or firms; and

(16) Taxes.

**§ 627.440 Classification of costs.**

(a) Allowable costs for programs under title II and title III shall be charged (allocated) to a particular cost objective/category to the extent that benefits are received by such cost objective/category. Joint and similar types of costs may be charged initially to a cost pool used for the accumulation of such costs pending distribution in due course to the ultimate benefiting cost objective/category. The classification of costs for programs under title III of the Act are set forth at §631.13 of this chapter, Classification of costs at State and substate levels.

(b) For State-administered programs under Title II, the State is required to plan, control, and charge expenditures against the following cost objectives/categories:

(1) Titles II-A and II-C (combined)—capacity building and technical assistance (sections 202(c)(1)(B) and

262(c)(1)(B) of the Act to carry out activities pursuant to sections 202(c)(3)(A) and 262(c)(3)(A) of the Act);

(2) Titles II-A and II-C (combined)—8 percent coordination (sections 202(c)(1)(C) and 262(c)(1)(C) of the Act to carry out activities pursuant to section 123(d)(2)(A) of the Act);

(3) Titles II-A and II-C (combined)—8 percent services/direct training (sections 202(c)(1)(C) and 262(c)(1)(C) of the Act to carry out activities pursuant to section 123(d)(2)(B) of the Act);

(4) Titles II-A and II-C (combined)—8 percent services/training-related and supportive services (sections 202(c)(1)(C) and 262(c)(1)(C) of the Act to carry out activities pursuant to section 123(d)(2)(B) of the Act);

(5) Titles II-A and II-C (combined)—8 percent services/administration (sections 202(c)(1)(C) and 262(c)(1)(C) of the Act to carry out activities pursuant to section 123(d)(2)(B) of the Act);

(6) Titles II-A and II-C (combined)—8 percent services to disadvantaged (section 202(c)(1)(C) and 262(c)(1)(C) of the Act to carry out activities pursuant to section 123(d)(2)(C) of the Act);

(7) Title II-A—older individuals/direct training (section 202(c)(1)(D) of the Act to carry out activities pursuant to section 204(d) of the Act);

(8) Title II-A—older individuals/training-related and supportive services (section 202(c)(1)(D) of the Act to carry out activities pursuant to section 204(d) of the Act);

(9) Title II-A—older individuals/administration (section 202(c)(1)(D) of the Act to carry out activities pursuant to section 204(d) of the Act); and

(10) Title II—administration (sections 202(c)(1)(A) and 262(c)(1)(A) of the Act to carry out activities pursuant to Title II of the Act, including Title II-B).

(c)(1) SDA grant recipients and their subrecipients shall plan, control, and charge expenditures, excluding incentive funds received pursuant to sections 202(c)(1)(B) and 262(c)(1)(B) of the Act, against the following cost objectives/categories:

(i) Title II-A—direct training services;

(ii) Title II-C—direct training services;

(iii) Title II-A—training-related and supportive services;

(iv) Title II-C—training-related and supportive services;

(v) Title II-B—training and supportive services;

(vi) Title II-A—administration;

(vii) Title II-B—administration; and

(viii) Title II-C—administration.

(2) Incentive funds received pursuant to sections 202(c)(1)(B) and 262(c)(1)(B) of the Act, may be combined and accounted for in total, without regard to cost categories or cost limitations.

(d) States and subrecipients shall use the following definitions in assigning costs to the cost categories contained in paragraphs (b) and (c) of this section:

(1) *Direct training services—title II-A.* Costs for direct training services that may be charged to the title II-A program are:

(i) The personnel and non-personnel costs directly related to providing those services to participants specified in section 204(b)(1) of the Act and which can be specifically identified with one or more of those services. Generally, such costs are limited to:

(A) Salaries, fringe benefits, equipment, supplies, space, staff training, transportation, and other related costs of personnel directly engaged in providing training; and

(B) Salaries, fringe benefits, and related non-personnel costs of program component supervisors and/or coordinators as well as clerical staff, provided such staff work exclusively on activities or functions specified in section 204(b)(1) of the Act or allocations of such costs are made based on actual time worked or other equitable cost allocation methods;

(ii) Books, instructional materials, and other teaching aids used by or for participants;

(iii) Equipment and materials used in providing training to participants;

(iv) Classroom space and utility costs;

(v) Costs of insurance coverage of participants as specified at §627.315(b) of this part, Benefits and Working Conditions;

(vi) Payments to vendors for goods or services procured for the use or benefit

of program participants for direct training services, including:

(A) Payments for commercially available training packages purchased competitively pursuant to section 141(d)(3) of the Act;

(B) Tuition charges, entrance fees, and other usual and customary fees of an educational institution when such tuition charges, entrance fees, or other fees are not more than the educational institution's catalogue price, necessary to receive specific training, charged to the general public to receive the same training, and are for training of participants; and

(C) Payments to OJT employers, but not brokering contractors. Costs incurred under brokering arrangements shall be allocated to all of the benefitting cost categories, and

(vii) Payments to JTPA participants that represent hours spent in a direct training activity (e.g., wages, work-based training payments, training payments for combined activities), including work experience, vocational exploration, limited internships, and entry employment.

(2) *Direct training services—title II-C.* Costs for direct training services that may be charged to the title II-C program are the costs identified in paragraph (d)(1) of this section as well as costs directly related to providing those services to participants specified in section 264(c)(1) of the Act and which can be specifically identified with one or more of those services.

(3) *Training-related and supportive services—title II-A.* Costs for training-related and supportive services that may be charged to the title II-A program are:

(i) The personnel and non-personnel costs directly related to providing outreach, intake, and eligibility determination, as well as those services to participants specified in section 204(b)(2) of the Act, and which can be specifically identified with one or more of those services. Generally, such costs are limited to:

(A) Salaries, fringe benefits, equipment, supplies, space, staff training, transportation, and other related costs of personnel directly engaged in providing training-related and/or supportive services; and

(B) Salaries, fringe benefits, and related non-personnel costs of program component supervisors and/or coordinators as well as clerical staff, provided such staff work exclusively on activities or functions specified in section 204(b)(2) of the Act or allocations of such costs are made based on actual time worked or another equitable allocation method.

(ii) Needs-based payments, cash incentives and bonuses, other financial assistance and supportive services to participants and applicants, where applicable.

(4) *Training-related and supportive services—title II-C.* Costs for training-related and supportive services that may be charged to the title II-C program are the costs identified in paragraph (d)(3) of this section, as well as costs directly related to providing those services to participants specified in section 264(c)(2) of the Act and which can be specifically identified with one or more of those services.

(5) *Administration.* The costs of administration are those portions of necessary and allowable costs associated with the overall management and administration of the JTPA program and which are not directly related to the provision of services to participants or otherwise allocable to the program cost objectives/categories in paragraphs (b)(1)-(8) or (c)(1) (i)-(v) of this section. These costs can be both personnel and non-personnel and both direct and indirect. Costs of administration shall include:

(i) Except as provided in paragraph (e)(1) of this section, costs of salaries, wages, and related costs of the recipient's or subrecipient's staff or PIC staff engaged in:

(A) Overall program management, program coordination, and general administrative functions, including the salaries and related costs of the executive director, JTPA director, project director, personnel officer, fiscal officer/bookkeeper, purchasing officer, secretary, payroll/insurance/property clerk and other costs associated with carrying out administrative functions;

(B) Preparing program plans, budgets, schedules, and amendments thereto;

(C) Monitoring of programs, projects, subrecipients, and related systems and processes;

(D) Procurement activities, including the award of specific subgrants, contracts, and purchase orders;

(E) Providing State or local officials and the general public with information about the program (public relations);

(F) Developing systems and procedures, including management information systems, for assuring compliance with program requirements;

(G) Preparing reports and other documents related to the program requirements;

(H) Coordinating the resolution of audit findings;

(I) Evaluating program results against stated objectives; and

(J) Performing such administrative services as general legal services, accounting services, audit services; and managing purchasing, property, payroll, and personnel;

(ii) Costs for goods and services required for administration of the program, including such goods and services as rental or purchase of equipment, utilities, office supplies, postage, and rental and maintenance of office space;

(iii) The costs of organization-wide management functions; and

(iv) Travel costs incurred for official business in carrying out program management or administrative activities, including travel costs incurred by PIC members.

(e) *Other cost classification guidance.*

(1) Personnel and related non-personnel costs of the recipient's or subrecipient's staff, including project directors, who perform services or activities that benefit two or more of the cost objectives/categories identified in this section may be allocated to the benefiting cost objectives/categories based on documented distributions of actual time worked or other equitable cost allocation methods.

(2) Indirect or overhead costs normally shall be charged to administration, except that specific costs charged to an overhead or indirect cost pool that can be identified directly with a JTPA cost objective/category other than administration may be charged to

the JTPA cost objective/category directly benefitted. Documentation of such charges shall be maintained.

(3) Where an award to a subrecipient is for a “commercially available off-the-shelf training package,” as defined at §626.5 of this chapter, the subrecipient may charge all costs of such package to the direct training services cost category.

(4) Profits, fees, and other revenues earned by a subrecipient that are in excess of actual costs incurred, to the extent allowable and consistent with the guidelines on allowable costs prescribed by the Governor in accordance with §627.435(i). Cost principles and allowable costs, may be allocated to all three cost categories based on the proportionate share of actual costs incurred attributable to each category.

**§ 627.445 Limitations on certain costs.**

(a) *State-administered programs—(1) Services for older individuals.* Of the funds allocated for any program year for section 202(c)(1)(D) of the Act to carry out activities pursuant to section 204(d) of the Act—

(i) Not less than 50 percent shall be expended for the cost of direct training services; and

(ii) Not more than 20 percent shall be expended for the cost of administration.

(2) *State education services.* Of the funds allocated for any program year for sections 202(c)(1)(C) and 262(c)(1)(C) of the Act to carry out activities pursuant to section 123(d)(2)(B) of the Act—

(i) Not less than 50 percent shall be expended for the cost of direct training services; and

(ii) Not more than 20 percent shall be expended for the cost of administration.

(3) The limitations specified in paragraph (a)(2) of this section shall apply to the combined total of funds allocated for sections 202(c)(1)(C) and 262(c)(1)(C) of the Act.

(b) *SDA allocations.* (1) In applying the title II-A and II-C cost limitations specified in section 108(b)(4) of the Act, the funds allocated to a service delivery area shall be net of any:

(i) Transfers made in accordance with sections 206, 256, and 266 of the Act; and

(ii) Reallocations made by the Governor in accordance with section 109(a) of the Act.

(2) The limitations specified in paragraph (b)(1) of this section shall apply separately to the funds allocated for title II-A and title II-C programs.

(3) The title II-B administrative cost limitation of 15 percent shall be 15 percent of the funds allocated for any program year to a service delivery area, excluding any funds transferred to title II-C in accordance with section 256 of the Act (section 253(a)(3)).

(c)(1) The State shall establish a system to regularly assess compliance with the cost limitations including periodic review and corrective action, as necessary.

(2) States and service delivery areas shall have the 3-year period of fund availability to comply with the cost limitations in section 108 of the Act and paragraphs (a) and (b) of this section (section 161(b)).

(d) Administrative costs incurred by a community-based organization or non-profit service provider shall not be included in the limitation described in section 108(b)(4)(A) of the Act if:

(1) Such costs are incurred under an agreement that meets the requirements of section 141(d)(3)(C) (i) and (ii) of the Act;

(2) The total administrative expenditures of the service delivery area, including the administrative expenditures of such community-based organizations or non-profit service providers, do not exceed 25 percent of the funds allocated to the service delivery area for the program year of allocation; and

(3) The total direct training expenditures of the service delivery area, including the direct training expenditures of such community-based organizations or non-profit service providers, is equal to or exceeds 50 percent of the funds allocated to the service delivery area for the program year less one-half of the percentage by which the total administrative expenditures of the service delivery area exceeds 20 percent. For example, if the total administrative expenditures of the service delivery area is 24 percent, then the total direct training expenditures of the service delivery area must be at least 48 percent.

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(e) The provisions of this section do not apply to any title III programs.

(f) The provisions of this section do not apply to any designated SDA which served as a concentrated employment program grantee for a rural area under the Comprehensive Employment and Training Act (section 108(d)).

**§ 627.450 Program income.**

(a) *Definition of program income.* (1) Program income means income received by the recipient or subrecipient that is directly generated by a grant or subgrant supported activity, or earned only as a result of the grant or subgrant. Program income includes:

(i) Income from fees for services performed and from conferences;

(ii) Income from the use or rental of real or personal property acquired with grant or subgrant funds;

(iii) Income from the sale of commodities or items fabricated under a grant or subgrant;

(iv) Revenues earned by a governmental or non-profit service provider under either a fixed-price or reimbursable award that are in excess of the actual costs incurred in providing the services; and

(v) Interest income earned on advances of JTPA funds.

(2) Program income does not include:

(i) Rebates, credits, discounts, refunds, etc., or interest earned on any of them, which shall be credited in accordance with § 627.435(d), Cost principles and allowable costs;

(ii) Taxes, special assessments, levies, fines, and other such governmental revenues raised by a recipient or subrecipient; or

(iii) Income from royalties and license fees for copyrighted material, patents, patent applications, trademarks, and inventions developed by a recipient or subrecipient.

(3) *Property.* Proceeds from the sale of property shall be handled in accordance with the requirements of § 627.465 of this part, Property management standards.

(b) *Cost of generating program income.* Costs incidental to the generation of program income may be deducted, if not already charged to the grant, from gross income to determine program income.

(c) *Use of program income.* (1)(i) A recipient or subrecipient may retain any program income earned by the recipient or subrecipient only if such income is added to the funds committed to the particular JTPA grant or subgrant and title under which it was earned and such income is used for that title's purposes and under the terms and conditions applicable to the use of the grant funds.

(ii) A State may use interest it earns on JTPA funds, deposited by the United States to the State's account, to satisfy the requirement at 31 U.S.C. 6503(c) that the State pay interest on such deposits.

(iii) The classification of costs in §§ 627.440 and 631.13 shall apply to the use of program income.

(iv) The administrative cost limitation in §§ 627.445 and 631.14 shall apply to the use of program income, except that program income used in accordance with paragraph (c)(1)(ii) of this section shall be exempt from the administrative cost limitations.

(2) Program income generated under title II may also be used to satisfy the matching requirement of section 123(b) of the Act.

(3) Program income shall be used prior to the submission of the final report for the funding period of the program year of funds to which the earnings are attributable.

(4) If the subrecipient that earned program income cannot use such income for JTPA purposes, the recipient may permit another entity to use the program income for JTPA purposes.

(5) Program income not used in accordance with the requirements of this section shall be remitted to the Department of Labor.

(d) *Program and other income after the funding period.* Rental income and user fees on real and personal property acquired with JTPA funds shall continue to be JTPA program income in subsequent funding periods. There are no Federal requirements governing the disposition of all other income that is earned after the end of the funding period.

**§ 627.455 Reports required.**

(a) *General.* The Governor shall report to DOL pursuant to instructions

issued by DOL. Reports shall be submitted no more frequently than quarterly, in accordance with section 165(f) of the Act, and within 45 calendar days after the end of the report period. Additional reporting requirements for title III are set forth at § 631.15 of this chapter.

(b) A recipient may impose different forms or formats, shorter due dates, and more frequent reporting requirements on subrecipients, however, the recipient is required to meet the reporting requirements imposed on it by DOL.

(c) DOL may provide computer outputs to recipients to expedite or contribute to the accuracy of reporting. DOL may accept the required information from recipients in electronically reported format or computer printouts instead of prescribed forms.

(d) *Financial reports.* (1) Financial reports for programs under titles I, II, and III shall be submitted to DOL by each State quarterly and by program year of appropriation.

(2) Each recipient shall report program outlays on an accrual basis. If the recipient's accounting records are not normally kept on the accrual basis, the recipient shall develop such accrual information through an analysis of the documentation on hand.

(3) A final financial report is required 90 days after the expiration of a funding period (see § 627.485 of this part, Closeout).

(4) Pursuant to section 104(b)(13) of the Act, the SDA shall annually report to the Governor. Among other items, this report shall include information on the extent to which the SDA has met the goals for the training and training-related placement of women in nontraditional employment.

**§ 627.460 Requirements for records.**

(a) Records, including the records identified in section 165(g) of the Act, shall be retained in accordance with section 165(e) of the Act. In establishing the time period of record retention requirements for records of subrecipients, the State may either:

(1) Impose the time limitation requirement of section 165(e) of the Act; or

(2) Require that subrecipient records for each funding period be retained for 3 years after the subrecipient submits to the awarding agency its final expenditure report for that funding period. Records for nonexpendable property shall be retained for a period of three years after final disposition of the property.

(b) The Governor shall ensure that the records under this section shall be retained beyond the prescribed period if any litigation or audit is begun or if a claim is instituted involving the grant or agreement covered by the records. In these instances, the Governor shall ensure that the records shall be retained until the litigation, audit, or claim has been finally resolved.

(c) In the event of the termination of the relationship with a subrecipient, the Governor or SDA or title III SSG shall be responsible for the maintenance and retention of the records of any subrecipient unable to retain them.

(d) *Record storage.* Records shall be retained and stored in a manner which will preserve their integrity and admissibility as evidence in any audit or other proceeding. The burden of production and authentication of the records shall be on the custodian of the records.

(e) *Federal and awarding agencies' access to records—*(1) *Records of recipients and subrecipients.* The awarding agency, the Department of Labor (including the Department of Labor's Office of Inspector General), and the Comptroller General of the United States, or any of their authorized representatives, have the right of timely and reasonable access to any books, documents, papers, computer records, or other records of recipients and subrecipients that are pertinent to the grant, in order to conduct audits and examinations, and to make excerpts, transcripts, and photocopies of such documents. This right also includes timely and reasonable access to recipient and subrecipient personnel for the purpose of interview and discussion related to such documents.

(2) *Expiration of right of access.* The right of access in this section is not

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limited to the required retention period but shall last as long as the records are retained.

**§ 627.463 Public access to records.**

(a) *Public access.* Except as provided in paragraph (b) of this section, records maintained by recipients or subrecipients pursuant to § 627.460 shall be made available to the public upon request, notwithstanding the provisions of State or local law.

(b) *Exceptions.* This requirement does not apply to:

(1) Information, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or

(2) Trade secrets, or commercial or financial information, obtained from a person and privileged or confidential.

(c) *Fees.* For processing of a request for a record under this section, a fee may be charged to the extent sufficient to recover the cost applicable to processing such request (section 165(a)(4)).

**§ 627.465 Property management standards.**

(a) *States and governmental subrecipients.* Real property, equipment, supplies, and intangible property acquired or produced after July 1, 1993, by States and governmental subrecipients with JTPA funds shall be governed by the definitions and property requirements in the DOL regulations at 29 CFR part 97, except that prior approval by the Department of Labor to acquire property is waived.

(b) *Nongovernmental subrecipients.* Except as provided in paragraph (c) of this section, real and personal property, including intangible property, acquired or produced after July 1, 1993, by nongovernmental subrecipients with JTPA funds shall be governed by the definitions and property management standards of OMB Circular A-110, as codified by administrative regulations of the Department of Labor in 29 CFR Part 95, except that prior approval by the Department of Labor to acquire property is waived.

(c) *Special provisions for property acquired under subgrants to commercial organizations—(1) Scope.* This paragraph (c) applies to real and personal property other than supplies that are ac-

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quired or produced after July 1, 1993, under a JTPA subgrant to a commercial organization.

(2) *Property acquired by commercial subrecipients.* Title to property acquired or produced by a subrecipient that is a commercial organization shall vest in the awarding agency, provided such agency is a governmental entity or nongovernmental organization that is not a commercial organization. Property so acquired or produced shall be considered to be acquired or produced by the awarding agency and paragraph (a) or (b) of this section, as appropriate, shall apply to that property. If the awarding agency is also a commercial organization, title shall vest in the higher level, non-commercial awarding agency that made the subaward to the commercial subrecipient.

(3) *Approval for acquisition.* A subrecipient that is a commercial organization shall not acquire property subject to this section without the prior approval of the awarding agency.

(d) *Notification to the Secretary of real property acquisitions.* Recipients shall notify the Secretary immediately upon acquisition of real property with JTPA funds, including acquisitions by subrecipients. Such notification shall include the location of the real property and the Federal share percentage.

(e) *Property procured before July 1, 1993.* (1) Personal or real property procured with JTPA funds or transferred from programs under the Comprehensive Employment and Training Act must be used for purposes authorized by the Act. Subject to the Secretary's rights to such property, the Governor shall maintain accountability for property in accordance with State procedures and the records retention requirements of § 627.460 of this part.

(2) The JTPA program must be reimbursed the fair market value of any unneeded property retained by the Governor for use in a non-JTPA program. The proceeds from the sale of any property or transfer of property to a non-JTPA program must be used for purposes authorized under the Act.

**§ 627.470 Performance standards.**

(a) *General.* The Secretary shall prescribe performance standards for adult programs under title II-A, for youth

programs under title II-C, for dislocated worker programs under title III, and for older worker programs under section 204(d) of the Act. Any performance standards developed for employment competencies shall be based on such factors as entry level skills and other hiring requirements.

(b) Pursuant to instructions and time lines issued by the Secretary, the Governor shall:

(1) Collect the data necessary to set performance standards pursuant to section 106 of the Act; and

(2) Maintain records and submit reports required by sections 106(j)(3), 165(a)(3), (c)(1), and (d) and 121(b)(6) of the Act.

(c) *Title II performance standards.* (1) The Governor shall establish SDA performance standards for title II within the parameters set by the Secretary pursuant to sections 106(b) and (d) of the Act and apply the standards in accordance with section 202(c)(1)(B) of the Act.

(2) The Governor shall establish incentive award policies pursuant to section 106(b)(7) of the Act, except for programs operated under section 204(d) of the Act. Pursuant to section 106(b)(8) of the Act, Governors may not consider standards relating gross program expenditures to performance measures in making such incentive awards.

(3) The Governor shall provide technical assistance to SDA's failing to meet performance standards established by the Secretary for a given program year (section 106(j)(2)).

(4)(i) If an SDA fails to meet a prescribed number of the Secretary's performance standards for 2 consecutive years, the Governor shall notify the Secretary and the service delivery area of the continued failure and impose a reorganization plan (section 106(j)(4)).

(ii) The number of standards deemed to constitute failure shall be specified by the Secretary biennially and shall be based on an appropriate proportion of the total number established by the Secretary for that performance cycle. In determining failure, the specified proportion shall be applied separately to each year of the two year cycle.

(iii) A reorganization plan shall not be imposed for a failure to meet per-

formance standards other than those established by the Secretary.

(iv) A reorganization plan shall be considered to be imposed when, at a minimum:

(A) The problem or deficiency is identified,

(B) The problem is communicated to the SDA, and

(C) The SDA is provided an initial statement of the actions or steps required and the timeframe within which they are to be initiated. A final statement of required steps and actions is to be issued within 30 days.

(d)(1) If the Governor does not impose a reorganization plan, required by paragraph (c)(4) of this section, within 90 days of notifying the Grant Officer of an SDA's continued failure to meet performance standards, the Grant Officer shall develop and impose such a plan (section 106(j)(5)).

(2) Before imposing a reorganization plan, the Grant Officer shall notify the Governor and SDA in writing of the intent to impose the plan and provide both parties the opportunity to submit comments within 30 days of receipt of the Grant Officer's notice.

(e) An SDA subject to a reorganization plan under paragraphs (c)(4) or (d) of this section may, within 30 days of receiving notice of such action, appeal to the Secretary to revise or rescind the reorganization plan under the procedures set forth at §627.471 of this subpart, Reorganization plan appeals (section 106(j)(6)(A)).

(f) *Secretarial action to recapture or withhold funds.* (1) The Grant Officer shall recapture or withhold an amount not to exceed one-fifth of the State administration set-aside allocated under sections 202(c)(1)(A) and 262(c)(1)(A) of the Act when:

(i) The Governor has failed to impose a reorganization plan under paragraph (c)(4) of this section, for the purposes of providing technical assistance under a reorganization plan imposed by the Secretary (section 106(j)(5)(B)); or

(ii) The Secretary determines in an appeal provided for at paragraph (e) of this section, and set forth at §627.471 of this subpart, that the Governor has not provided appropriate technical assistance as required at section 106(j)(2) (section 106(j)(6)(B)).

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(2)(i) A Governor of a State that is subject to recapture or withholding under paragraph (f)(1) of this section may, within 30 days of receipt of such notice, appeal such recapture or withholding to the Secretary.

(ii) The Secretary may consider any comments submitted by the Governor and shall make a decision within 45 days after the appeal is received.

(g) *Title III performance standards.* (1) The Governor shall establish SSG performance standards for programs under title III within the parameters set annually by the Secretary pursuant to section 106(c) and (d) of the Act.

(2) Any performance standard for programs under title III shall make appropriate allowances for the difference in cost resulting from serving workers receiving needs-related payments authorized under §631.20 of this chapter (section 106(c)(2)).

(3) The Secretary annually shall certify compliance, if the program is in compliance, with the title III performance standards established pursuant to paragraph (a) of section 322(a)(4) of the Act.

(4) The Governor shall not establish standards for the operation of programs under title III that are inconsistent with the performance standards established by the Secretary under provisions of section 106(c) of the Act (section 311(b)(8)).

(5) When an SSG fails to meet performance standards for 2 consecutive years, the Governor may institute procedures pursuant to the Governor's bypass authority in accordance with §631.38(b) of this chapter or require redesignation of the substate grantee in accordance with §631.35 of this chapter, as appropriate.

**§ 627.471 Reorganization plan appeals.**

(a) A reorganization plan imposed by the Governor, as provided for at §627.470(c)(4) or 627.477(b)(2) of this part, or by the Secretary, as provided for at §627.470(d) of this part, may be appealed directly to the Secretary without prior exhaustion of local remedies.

(b)(1) Appeals shall be submitted to the Secretary, U.S. Department of Labor, Washington, DC 20210, ATTENTION: ASET. A copy of the appeal shall

be provided simultaneously to the Governor.

(2) The Secretary shall not accept an appeal dated later than 30 days after receipt of written notification from the Governor or the Secretary.

(3) The appealing party shall explain why it believes the decision to impose the reorganization plan is contrary to the provisions of section 106 of the Act.

(4) The Secretary shall accept the appeal and make a decision only with regard to determining whether or not the decision to impose the reorganization plan is inconsistent with section 106 of the Act. The Secretary may consider any comments submitted by the Governor or the SDA, as appropriate. The Secretary shall make a final decision within 60 days after this appeal is received (section 106(j)).

**§ 627.475 Oversight and monitoring.**

(a) The Secretary may monitor all recipients and subrecipients of financial assistance pursuant to section 163 of the Act.

(b) The Governor is responsible for oversight of all SDA and SSG activities and State-supported programs. The Governor shall develop and make available for review a State monitoring plan. The plan shall specify the mechanism which:

(1) Ensures that established policies to achieve program quality and outcomes meet the objectives of the Act and regulations promulgated thereunder;

(2) Enables the Governor to determine if SDA's and SSG's have demonstrated substantial compliance with the requirements for oversight;

(3) Determines whether the Job Training Plan shall be disapproved consistent with the criteria contained in section 105(b)(1) of the Act;

(4) Regularly examines expenditures against the cost categories and cost limitations specified in the Act and these regulations;

(5) Ensures that all areas of SDA and SSG operations are monitored onsite regularly, but not less than once annually; and

(6) Provides for corrective action to be imposed if conditions in paragraphs (b)(1)-(4) of this section are not met.

(c) The Governor shall issue instructions to SDA's and title III SSG's on the development of a substate monitoring plan. The instructions for development of the monitoring plan, at a minimum, shall address the monitoring scope and frequency, and the Secretary's emphasis and direction. The substate monitoring plan shall be part of the job training plan.

(d) The Governor shall establish general standards for PIC oversight responsibilities. The required PIC standards shall be included in the Governor's Coordination and Special Services Plan (GCSSP).

(e)(1) The PIC, pursuant to standards established by the Governor, shall establish specific policies for monitoring and oversight of SDA performance which shall be described in the job training plan.

(2) The PIC shall exercise independent oversight over activities under the job training plan which shall not be circumscribed by agreements with the appropriate chief elected official(s) of the SDA.

(f) The PIC and chief elected official(s) may conduct such oversight as they, individually or jointly, deem necessary or delegate oversight responsibilities to an appropriate entity pursuant to their mutual agreement.

**§ 627.477 Governor's determination of substantial violation.**

(a) Except as provided at paragraph (d) of this section, if, as a result of financial and compliance audits or otherwise, the Governor determines that there is a substantial violation of a specific provision of this Act or the regulations under this Act, and corrective action has not been taken, the Governor shall

(1) Issue a notice of intent to revoke approval of all or part of the plan affected; or

(2) Impose a reorganization plan, which may include

(i) Restructuring the private industry council involved;

(ii) Prohibiting the use of designated service providers;

(iii) Selecting an alternative entity to administer the program for the service delivery area involved;

(iv) Merging the service delivery area into 1 or more other existing service delivery areas; or

(v) Other such changes as the Secretary or Governor determines necessary to secure compliance (section 164(b)(1)).

(b)(1) The actions taken by the Governor pursuant to paragraph (a)(1) of this section may be appealed to the Secretary as provided at § 628.426 of this chapter (section 164(b)(2)(A)).

(2) The actions taken by the Governor pursuant to paragraph (a)(2) of this section may be appealed to the Secretary, as provided at § 627.471 of this part (section 164(b)(2)(B)).

(c) Allegations that the Governor failed to promptly take the actions required under paragraph (a) of this section shall be handled under § 627.607 of this part (section 164(b)(3)).

(d) This section does not apply to remedial actions for SDA failures to meet performance standards, which are provided for at § 627.470 of this part, and do not apply to remedial actions for the failure to comply with procurement standards, which are provided for at § 627.703 of this part.

**§ 627.480 Audits.**

(a) *Non-Federal Audits*—(1) *Governments.* Each recipient and governmental subrecipient is responsible for complying with the Single Audit Act of 1984 (31 U.S.C. 7501-7) and 29 CFR part 96, the Department of Labor regulations which implement Office of Management and Budget (OMB) Circular A-128, "Audits of State and Local Governments".

(2) *Non-governmental organizations.* Each non-governmental recipient or subrecipient shall comply with OMB Circular A-133, "Audits of Institutions of Higher Education and Other Non-profit Institutions", as implemented by the Department of Labor regulations at 29 CFR part 96. The provisions of this paragraph (a)(2) do not apply to any non-governmental organization that is:

(i) A commercial organization; or

(ii) A hospital or an institution of higher education for which State or local governments choose to apply OMB Circular A-128.

(3) *Commercial organizations.* A commercial organization which is a recipient or subrecipient and which receives \$25,000 or more a year in Federal financial assistance to operate a JTPA program shall have an audit that:

(i) Is usually performed annually, but not less frequently than every two years;

(ii) Is completed within one year after the end of the period covered by the audit and submitted to the awarding agency within one month after completion;

(iii) Is either:

(A) An independent financial and compliance audit of Federal funds that includes coverage of the JTPA program within its scope, and is conducted and prepared in accordance with generally accepted government auditing standards; or

(B) An organization-wide audit that includes financial and compliance coverage of the JTPA program within its scope.

(b) *Federal audits.* The notice of audits conducted or arranged by the Office of Inspector General or the Comptroller General shall be provided in advance, as required by section 165(b) of the Act.

(c) *Audit reports.* (1) Audit reports of recipient-level entities and other organizations which receive JTPA funds directly from the U.S. Department of Labor shall be submitted to the Office of Inspector General.

(2) Audit reports of organizations other than those described in paragraph (c)(1) of this section shall be submitted to the entity which provided the JTPA funds.

(d) Each entity that receives JTPA program funds and awards a portion of those funds to one or more subrecipients shall:

(1) Ensure that each subrecipient complies with the applicable audit requirements;

(2) Resolve all audit findings that impact the JTPA program with its subrecipient and ensure that corrective action for all such findings is instituted within 6 months after receipt of the audit report (where appropriate, corrective action shall include debt collection action for all disallowed costs); and

(3) Maintain an audit resolution file documenting the disposition of reported questioned costs and corrective actions taken for all findings. The ETA Grant Officer may request that an audit resolution report, as specified in paragraph (e)(2) of this section, be submitted for such audits or may have the audit resolution reviewed through the compliance review process.

(e)(1) Audits of recipient-level entities and other organizations which receive JTPA funds directly from DOL and all audits conducted by or under contract for the Office of Inspector General shall be issued by the OIG to the Employment and Training Administration after acceptance by OIG.

(2) After receipt of the audit report, the ETA Grant Officer shall request that the State submit an audit resolution report documenting the disposition of the reported questioned costs, *i.e.*, whether allowed or disallowed, the basis for allowing questioned costs, the method of repayment planned or required, and corrective actions, including debt collection efforts, taken or planned.

(f) If the recipient intends to propose the use of "stand-in" costs as substitutes for otherwise unallowable costs, the proposal shall be included with the audit resolution report. To be considered, the proposed "stand-in" costs shall have been reported as uncharged JTPA program costs, included within the scope of the audit, and accounted for in the auditee's financial system, as required by §627.425 of this part, Standards for financial management and participant data systems. To be accepted, stand-in costs shall be from the same title, and program year as the costs which they are proposed to replace, and shall not result in a violation of the applicable cost limitations.

(g) After receiving the audit resolution report, the ETA Grant Officer shall review the report, the recipient's disposition, and any liability waiver request submitted in accordance with §627.704 of this part. If the Grant Officer agrees with all aspects of the recipient's disposition of the audit, the Grant Officer shall so notify the recipient. If the Grant Officer disagrees with the recipient's conclusion on specific points in the audit, the Grant Officer

shall resolve the audit through the initial and final determination process described in §627.606 of this part.

**§ 627.481 Audit resolution.**

(a) *Federal audit resolution.* When the OIG issues an audit report to the Employment and Training Administration for resolution, the ETA Grant Officer shall provide a copy of the report to the recipient (if it does not already have the report), along with a request that the recipient submit its audit resolution report as specified in §627.480(e)(2) of this part, unless the Grant Officer chooses to proceed directly against the recipient pursuant to §627.601 of this part.

(1) For audits of recipient-level entities and other organizations which receive JTPA funds directly from DOL, the Grant Officer shall request that the audit resolution report be submitted within 60 days from the date that the audit report is issued by the OIG.

(2) For audits of subrecipient organizations, the Grant Officer shall provide the recipient with a 180-day period within which to resolve the audit with its subrecipient(s), and shall request that the audit resolution report be submitted at the end of that 180-day period.

(b) After receiving the audit resolution report, the ETA Grant Officer shall review the report, the recipient's disposition, any liability waiver request, and any proposed "stand-in" costs. If the Grant Officer agrees with all aspects of the recipient's disposition of the audit, the Grant Officer shall so notify the recipient, constituting final agency action on the audit. If the Grant Officer disagrees with the recipient's conclusion on specific points in the audit, or if the recipient fails to submit its audit resolution report, the Grant Officer shall resolve the audit through the initial and final determination process described in §627.606 of this part. Normally, the Grant Officer's notification of agreement (a concurrence letter) or disagreement (an initial determination) with the recipient's audit resolution report will be provided within 180 days of the Grant Officer's receipt of the report.

(c) *Non-Federal audit resolution.* (1) To ensure timely and appropriate resolution for audits of all subrecipients, including SDA grant recipients and title III SSG's, and to ensure recipient-wide consistency, the Governor shall prescribe standards for audit resolution and debt collection policies and procedures that shall be included in each job training plan in accordance with section 104(b)(12) of the Act.

(2) The Governor shall prescribe an appeals procedure for audit resolution disputes which, at a minimum, provides for:

(i) The period of time, not less than 15 days nor more than 30 days, after the issuance of the final determination in which an appeal may be filed;

(ii) The rules of procedure;

(iii) Timely submission of evidence;

(iv) The timing of decisions; and

(v) Further appeal rights, if any.

**§ 627.485 Closeout.**

(a) *General.* The Grant Officer shall close out each annual JTPA grant agreement within a timely period after the funding period covered by the award has expired.

(b) Revisions to the reported expenditures for a program year of funds may be made until 90 days after the time limitation for expenditure of JTPA funds, as set forth in section 161(b) of the Act, has expired. The Grant Officer may extend this deadline if the recipient submits a written request with justification. After that time, the Grant Officer shall consider all reports received as final and no additional revisions may be made.

(c) When closing out a JTPA grant, the Grant Officer shall notify the recipient, by certified mail, that, since the time limitation for expenditure of funds covered by the grant award has expired, it is the Department of Labor's intent to close the annual grant as follows:

(1) *Cost adjustment.* Based on receipt of reports in paragraph (b) of this section, the Grant Officer shall make upward or downward adjustments to the allowable costs; and

(2) *Cash adjustment.* DOL shall make prompt payment to the recipient for allowable reimbursable costs; the recipient shall promptly refund to DOL any

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balance of cash advanced that is in excess of allowable costs for the grant award being closed.

(d) The recipient shall have an additional 60 days after the date of the notice described in paragraph (c) of this section in which to provide the Grant Officer with information as to the reason(s) why closeout should not occur.

(e) At the end of the 60-day period described in paragraph (d) of this section, the Grant Officer shall notify the recipient that closeout has occurred, unless information provided by the recipient, pursuant to paragraph (d) of this section, indicates otherwise.

**§ 627.490 Later disallowances and adjustments after closeout.**

The closeout of a grant does not affect:

(a) The Grant Officer's right to disallow costs and recover funds on the basis of a later audit or other review;

(b) The recipient's obligation to return any funds due as a result of later refunds, corrections, subrecipient audit disallowances, or other transactions;

(c) Records retention requirements in § 627.460 of this part, Requirements for records, and § 627.463 of this part, Public access to records;

(d) Property management requirements in § 627.465 of this part, Property management standards; and

(e) Audit and audit resolution requirements in § 627.480 of this part, Audits and § 627.481 of this part, Audit resolution.

**§ 627.495 Collection of amounts due.**

(a) Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms of the grant constitute a debt to the Federal Government. If not paid within a reasonable period after demand, the Secretary may take any actions permitted by law to recover the funds.

(b) The Secretary shall charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR ch. II).

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**Subpart E—Grievances Procedures at the State and Local Level**

**§ 627.500 Scope and purpose.**

(a) *General.* This subpart establishes the procedures which apply to the handling of noncriminal complaints under the Act at the Governor, the SDA, and the SSG levels. Nothing contained in this subpart shall be deemed to prejudice the separate exercise of other legal rights in pursuit of remedies and sanctions available outside the Act.

(b) *Handling of discrimination complaints.* Complaints of discrimination pursuant to section 167(a) of the Act shall be handled under 29 CFR part 34.

(c) *Complaints and reports of criminal fraud, waste, and abuse.* Information and complaints involving criminal fraud, waste, abuse or other criminal activity shall be reported through the Department's Incident Reporting System, directly and immediately to the DOL Office of Inspector General, Office of Investigations, 200 Constitution Avenue NW., Room S5514, Washington, DC 20210, or to the corresponding Regional Inspector General for Investigations, with a copy simultaneously provided to the Employment and Training Administration. The Hotline number is 1-800-347-3756. Other complaints of a non-criminal nature will continue to be handled under the procedures set forth in this part, subparts E and F, and through the Department's Incident Reporting System.

(d) *Non-JTPA remedies.* Whenever any person, organization, or agency believes that a recipient, an SDA, an SSG, or other subrecipient has engaged in conduct that violates the Act and that such conduct also violates a Federal statute other than JTPA, or a State or local law, that person, organization, or agency may, with respect to the non-JTPA cause of action, institute a civil action or pursue other remedies authorized under such other Federal, State, or local law against the recipient, the SDA, the SSG, or other subrecipient, without first exhausting the remedies in this subpart. Nothing in the Act or this chapter shall:

(1) Allow any person or organization to file a suit which alleges a violation of JTPA or regulations promulgated

thereunder without first exhausting the administrative remedies described in this subpart; or

(2) Be construed to create a private right of action with respect to alleged violations of JTPA or the regulations promulgated thereunder.

**§ 627.501 State grievance and hearing procedures for noncriminal complaints at the recipient level.**

(a)(1) Each recipient shall maintain a recipient-level grievance procedure and shall ensure the establishment of procedures at the SDA level and the SSG level for resolving any complaint alleging a violation of the Act, regulations promulgated thereunder, grants, or other agreements under the Act. The procedures shall include procedures for handling complaints and grievances arising in connection with JTPA programs operated by each SDA, SSG, and subrecipient under the Act (section 144(a)).

(2) The procedures described in paragraph (a)(1) of this section shall also provide for resolution of complaints arising from actions taken by the recipient with respect to investigations or monitoring reports.

(b) The recipient's grievance hearing procedure shall require written notice to interested parties of the date, time, and place of the hearing; an opportunity to present evidence; and a written decision. For matters under paragraph (a)(2) of this section, the notice of hearing shall indicate the nature of the violation(s) which the hearing covers.

**§ 627.502 Grievance and hearing procedures for noncriminal complaints at the SDA and SSG levels.**

(a) Each SDA and SSG, pursuant to guidelines established by the recipient, shall establish procedures for resolving complaints and grievances arising in connection with JTPA programs operated by the SDA, the SSG, and other subrecipients under the Act. The procedures also shall provide for resolution of complaints arising from actions taken by the SDA or the SSG with respect to investigations or monitoring reports of their subgrantees, contractors, and other subrecipients (section 144(a)).

(b) Each SDA and SSG grievance hearing procedure shall include written notice of the date, time, and place of the hearing; an opportunity to present evidence; a written decision; and a notice of appeal rights.

(c) The SDA and SSG procedures shall provide for a decision within 60 days of the filing of the complaint.

**§ 627.503 Recipient-level review.**

(a) If a complainant does not receive a decision at the SDA or the SSG level within 60 days of filing the complaint or receives a decision unsatisfactory to the complainant, the complainant shall have the right to request a review of the complaint by the recipient. The recipient shall issue a decision within 30 days of receipt of the complaint.

(b) The recipient shall also provide for an independent review, by a reviewer who is independent of the JTPA program, of a complaint initially filed at the recipient level on which a decision was not issued within 60 days of receipt of a complaint or on which the complainant has received an adverse decision. A decision shall be made within 30 days of receipt by the recipient.

(c) A request for review under the provisions of paragraphs (a) or (b) of this section shall be filed within 10 days of receipt of the adverse decision or, if no timely decision is rendered, within 15 days from the date on which the complainant should have received a timely decision.

(d) With the exception of complaints alleging violations of the labor standards under section 143 of the Act, the recipient's decision is final unless the Secretary exercises the authority for Federal-level review in accordance with the provisions at §627.601 of this part, Complaints and grievances at the Federal level. Complaints alleging violations of section 143 of the Act shall be handled under the procedures set forth at §627.603 of this part, special handling of labor standards violations under section 143.

**§ 627.504 Noncriminal grievance procedure at employer level.**

(a) Recipients, SDA's, SSG's, and other subrecipients shall assure that other employers, including private-for-

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profit employers of participants under the Act, have a grievance procedure relating to the terms and conditions of employment available to their participants (section 144(b)).

(b)(1) Employers under paragraph (a) of this section may operate their own grievance system or may utilize the grievance system established by the recipient, the SDA, or the SSG under this subpart, except as provided for in paragraph (b)(2) of this section. Employers shall inform participants of the grievance procedures they are to follow when the participant begins employment.

(2) If an employer is required to use a certain grievance procedure under a covered collective bargaining agreement, then those procedures should be followed for the handling of JTPA complaints under this section.

(c) An employer grievance system shall provide for, upon request by the complainant, a review of an employer's decision by the SDA, or the SSG and the recipient if necessary, in accordance with §§ 627.501 and 627.502 of this part.

**Subpart F—Federal Handling of Noncriminal Complaints and Other Allegations**

**§ 627.600 Scope and purpose.**

(a) This subpart establishes the procedures which apply to the filing, handling, and reviewing of complaints at the Federal level. Nothing in the Act or this chapter shall be construed to allow any person or organization to join or sue the Secretary with respect to the Secretary's responsibilities under JTPA except after exhausting the remedies in subpart E of this part and this subpart F.

(b) Complaints of discrimination pursuant to section 167(a) of the Act shall be handled under 29 CFR part 34.

**§ 627.601 Complaints and allegations at the Federal level.**

(a) The types of complaints and allegations that may be received at the Federal level for review include:

(1) Complaints for which the recipient has failed to issue a timely decision as required by § 627.503 of this part;

(2) Alleged violations of the Act and/or the regulations promulgated thereunder resulting from Federal, State, and/or SDA and SSG monitoring and oversight reviews;

(3) Alleged violations of the labor standards provisions at section 143 of the Act;

(4) Alleged violations of the relocation provisions in section 141(c) of the Act; and

(5) Other allegations of violations of the Act or the regulations promulgated thereunder.

(b) Upon receipt of a complaint or allegation alleging any of the violations listed in paragraph (a) of this section, the Secretary may:

(1) Direct the recipient to handle a complaint through local grievance procedures established under § 627.502 of this part; or

(2) Investigate and determine whether the recipient or subrecipient(s) are in compliance with the Act and regulations promulgated thereunder (section 163(b) and (c)).

(3) Allegations of violations of sections 141(c) or 143 of the Act and § 627.503 of this part shall be handled under paragraph (b)(2) of this section.

**§ 627.602 Resolution of investigative findings.**

(a)(1) As a result of an investigation or monitoring by the Department, or of the actions specified in paragraph (b)(2) of § 627.601 of this part, the Grant Officer shall notify the recipient of the findings of the investigation and shall give the recipient a period of time, not to exceed 60 days, depending on the nature of the findings, to comment and to take appropriate corrective actions.

(2) The Grant Officer shall review the complete file of the investigation and the recipient's actions. The Grant Officer's review shall take into account the sanction provisions of subpart G of this part. If the Grant Officer agrees with the recipient's handling of the situation, the Grant Officer shall so notify the recipient. This notification shall constitute final agency action.

(3) If the Grant Officer disagrees with the recipient's handling of the matter, the Grant Officer shall proceed pursuant to § 627.606 of this part, Grant officer resolution.

**§ 627.603 Special handling of labor standards violations under section 143 of the Act.**

(a) A complaint alleging JTPA section 143 violations may be submitted to the Secretary by either party to the complaint when:

(1) The complainant has exhausted the grievance procedures set forth at subpart E of this part, or

(2) The 60-day time period specified for reaching a decision under a procedure set forth at subpart E of this part has elapsed without a decision (section 144(a) and (d)(1)).

(b)(1) The Secretary shall investigate the allegations contained in a complaint alleging violations of JTPA section 143, make a determination whether a violation has occurred, and issue a decision within 120 days of receipt by the Secretary of the complaint (section 144(c) and (d)).

(2) If the results of the Secretary's investigation indicate that a decision by a recipient under a procedure set forth at subpart E of this part requires modification or reversal, or that the 60-day time period for decision under section 144(a) has elapsed, the Secretary shall modify, reverse, or issue such decision.

(3) If the Secretary modifies or reverses a decision made under a procedure set forth at subpart E of this part, or issues a decision where the 60-day time period has elapsed without a decision, the Secretary shall offer an opportunity for a hearing, in accordance with the procedures under section 166 of the Act and subpart H of this part (sections 144(d)(2) and 166(a)).

(4) If the Secretary upholds a recipient's decision, the determination is the final decision of the Secretary (section 144(d)(3)). This decision is not appealable to the Office of Administrative Law Judges.

(c) Except as provided in paragraph (d) of this section, remedies available under this section to a grievant for violations of section 143 of the Act shall be limited to:

(1) Suspension or termination of payments under the Act;

(2) Prohibition of placement of a participant, for an appropriate period of time, in a program under the Act with an employer that has violated section

143 of the Act, as determined under section 144(d) or (e) of the Act; and/or

(3) Appropriate equitable relief (other than back pay) (section 144(f)(1)).

(d) Available remedies for violations of section 143(a)(4), (b)(1), (b)(3), and (d) of the Act include the remedies listed in paragraph (c) of this section, and may include the following:

(1) Reinstatement of the grievant to the position held prior to displacement;

(2) Payment of lost wages and benefits; and/or

(3) Reestablishment of other relevant terms, conditions, and privileges of employment.

(e) Nothing in this section shall be construed to prohibit a grievant from pursuing a remedy authorized under another Federal, State, or local law for a violation of section 143 of the Act (section 144(g)).

**§ 627.604 Alternative procedure for handling labor standards violations under section 143 of the Act—binding arbitration.**

(a) A person alleging a violation of section 143 of the Act, as an alternative to processing the grievance under a procedure described at section 144 of the Act, may submit the grievance to a binding arbitration procedure, if a collective bargaining agreement covering the parties to the grievance so provides (section 144(e)(1)).

(b) A person electing to have her/his complaint on JTPA section 143 labor standard violations processed under binding arbitration provisions—

(1) Shall choose binding arbitration before, and in lieu of, initiating a complaint under other grievance procedures established pursuant to section 144 of the Act, and

(2) May not elect binding arbitration for a complaint that previously has been or is subject to any other grievance procedure established under the Act.

(c) Binding arbitration decisions under the provisions of section 144(e) of the Act are not reviewable by the Secretary.

(d) The remedies available to a grievant under binding arbitration are limited to those set forth at section 144(f)(1)(C) and (f)(2) of the Act (section 144(e)(2)).

(e) Nothing in this section shall be construed to prohibit a grievant from pursuing a remedy authorized under another Federal, State, or local law for a violation of section 143 of the Act (section 144(g)).

**§ 627.605 Special Federal review of SDA- and SSG-level complaints without decision.**

(a) Should the recipient fail to provide a decision as required in § 627.503 of this part, the complainant may then request from the Secretary a determination whether reasonable cause exists to believe that the Act or regulations promulgated thereunder have been violated.

(b) The Secretary shall act within 90 days of receipt of a request made pursuant to paragraph (a) of this section. Where there is reasonable cause to believe the Act or regulations promulgated thereunder have been violated, the Secretary shall direct the recipient to issue a decision adjudicating the dispute pursuant to recipient and local procedures. The Secretary's action does not constitute final agency action and is not appealable under the Act (sections 166(a) and 144(c)). If the recipient does not comply with the Secretary's order within 60 days, the Secretary may impose a sanction upon the recipient for failing to issue a decision.

(c) A request pursuant to paragraph (a) of this section shall be filed no later than 15 days from the date on which the complainant should have received a decision as required in § 627.503 of this part. The complaint shall contain the following:

(1) The full name, telephone number (if any), and address (if any) of the person making the complaint;

(2) The full name and address of the respondent against whom the complaint is made;

(3) A clear and concise statement of the facts, including pertinent dates, constituting the alleged violation;

(4) The provisions of the Act, regulations promulgated thereunder, grant, or other agreement under the Act believed to have been violated;

(5) A statement disclosing whether proceedings involving the subject of the request have been commenced or concluded before any Federal, State, or

local authority, and, if so, the date of such commencement or conclusion, the name and address of the authority, and the style of the case; and

(6) A statement of the date the complaint was filed with the recipient, the date on which the recipient should have issued decision, and an attestation that no decision was issued.

(d)(1) A request pursuant to paragraph (a) of this section will be considered to have been filed when the Secretary receives from the complainant a written statement sufficiently precise to evaluate the complaint and the grievance procedure used by the recipient, the SDA, or the SSG.

(2) When an imprecise request is received within the 15-day period prescribed in paragraph (a) of this section, the Secretary may extend the period for submission.

**§ 627.606 Grant Officer resolution.**

(a) When the Grant Officer is dissatisfied with the State's disposition of an audit, as specified in § 627.481 of this part, or other resolution of violations (including those arising out of incident reports or compliance reviews), with the recipient's response to findings resulting from investigations pursuant to § 627.503 of this part, or if the recipient fails to comply with the Secretary's decision pursuant to § 627.605(b) of this part, the initial and final determination process shall be used to resolve the matter.

(b) *Initial determination.* The Grant Officer shall make an initial determination on the findings for both those matters where there is agreement and those where there is disagreement with the recipient's resolution, including the allowability of questioned costs or activities. Such initial determination shall be based upon the requirements of the Act, regulations promulgated thereunder, grants, contracts, or other agreements under the Act.

(c) *Informal resolution.* The Grant Officer shall not revoke a recipient's grant in whole or in part, nor institute corrective actions or sanctions, without first providing the recipient with an opportunity to present documentation or arguments to resolve informally those matters in controversy contained in the initial determination.

The initial determination shall provide for an informal resolution period which shall be at least 60 days from issuance of the initial determination. If the matters are resolved informally, the Grant Officer shall issue a final determination pursuant to paragraph (d) of this section which notifies the parties in writing of the nature of the resolution and may close the file.

(d) *Grant Officer's final determination.*

(1) If the matter is not fully resolved informally, the Grant Officer shall provide each party with a written final determination by certified mail, return receipt requested. For audits of recipient-level entities and other recipients which receive JTPA funds directly from DOL, ordinarily the final determination will be issued not later than 180 days from the date that the OIG issues the final approved audit report to the Employment and Training Administration. For audits of subrecipients conducted by the OIG, ordinarily the final determination will be issued not later than 360 days from the date the OIG issues the final approved audit report to ETA.

(2) A final determination under this paragraph (d) shall:

- (i) Indicate that efforts to informally resolve matters contained in the initial determination have been unsuccessful;
- (ii) List those matters upon which the parties continue to disagree;
- (iii) List any modifications to the factual findings and conclusions set forth in the initial determination;
- (iv) Establish a debt, if appropriate;
- (v) Require corrective action when needed;
- (vi) Determine liability, method of restitution of funds and sanctions; and
- (vii) Offer an opportunity for a hearing in accordance with subpart H of this part.

(3) Unless a hearing is requested, a final determination under this paragraph (d) constitutes final agency action and is not subject to further review.

(e) Nothing in this section shall preclude the Grant Officer from issuing an initial determination and/or final determination directly to a subrecipient, in accordance with section 164(e)(3) of the Act. In such a case, the Grant Offi-

cer shall inform the recipient of such action.

**§ 627.607 Grant Officer resolution of Governor's failure to promptly take action.**

(a) An allegation, whether arising from a complaint, from monitoring or other information available to the Department, that a Governor failed to promptly take remedial action of a substantial violation of the Act or the regulations under this Act, as required by § 627.477 of this part, shall be promptly investigated by the Department.

(b) The Grant Officer shall notify the Governor of the findings of the investigation or monitoring and shall give the Governor a period of time, not to exceed 30 days, to comment on the nature of the findings and to take appropriate corrective actions.

(c) The Grant Officer shall review the complete file of the investigation, monitoring, and the Governor's actions.

(d) If the Grant Officer determines that, (1) as a result financial and compliance audits or otherwise, the Governor determined that there was a substantial violation of a specific provision of the Act or the regulations under this Act, and corrective action had not been taken and, (2) the Grant Officer determines that the Governor has not taken the actions required by § 627.477(a), the Grant Officer shall take such actions required by § 627.477(a).

(e) The Grant Officer's determination, unless a hearing is requested, constitutes final agency action and is not subject to further review. (Section 164(b)(3)).

**Subpart G—Sanctions for Violations of the Act**

**§ 627.700 Purpose and scope.**

This subpart describes the sanctions and appropriate corrective actions that may be imposed by the Secretary for violations of the Act, regulations promulgated thereunder, or grant terms and conditions (sections 106(j)(5), 164 (b), (d), (e), (f), (g), and (h)).

## § 627.702

### § 627.702 Sanctions and corrective actions.

(a) Except for actions under sections 106(j), 164 (b) and (f), and 167 of the Act and the funding restrictions specified at § 627.423 of this part, Funding restrictions for “high-risk” recipients and subrecipients, the Grant Officer shall utilize initial and final determination procedures outlined in § 627.606, Grant Officer resolution, of this part to impose a sanction or corrective action.

(b) To impose a sanction or corrective action regarding a violation of section 167 of the Act, the Department shall utilize the procedures of 29 CFR part 34.

(c) To impose a sanction or corrective action for failure to meet performance standards, where the recipient has not acted as required at section 106(j)(4), the Grant Officer shall utilize the procedures set forth at § 627.470 (d) and (f).

(d) To impose a sanction or corrective action for noncompliance with the procurement standards provisions set forth at §§ 627.420 and 627.703 of this part, where the recipient has not acted, the Grant Officer may utilize the procedures set forth at section 164(b) of the Act.

(e) To impose a sanction or corrective action for the Governor’s failure to promptly take remedial action of a substantial violation as required by § 627.477 of this part, the Grant Officer shall utilize the procedure set forth in § 627.607 of this part.

(f) The recipient shall be held responsible for all funds under its grant(s). The recipient shall hold subrecipients, including SDA’s and SSG’s, responsible for JTPA funds received through the grant, and may ultimately hold the units of local government which constitute the SDA or the SSG responsible for such funds.

(g) Nothing in this section shall preclude the Grant Officer from imposing a sanction directly against a subrecipient, as authorized in section 164(e)(3) of the Act. In such a case, the Grant Officer shall inform the recipient of such action.

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### § 627.703 Failure to comply with procurement provisions.

(a) If, as part of the recipient’s annual on-site monitoring of its SDA’s/SSG’s, the recipient determines that an SDA/SSG is not in compliance with the procurement requirements established in accordance with the provisions at section 164(a)(3) of the Act and § 627.420, of this part, Procurement, and § 627.422 of this part, Selection of service providers, the recipient shall:

(1) Require corrective action to secure prompt compliance; and

(2) Impose the sanctions provided for under the provisions at section 164(b) if the recipient finds that the SDA/SSG has failed to take timely corrective action under paragraph (a)(1) of this section (section 164(a) (4) and (5)).

(b) An action by the recipient to impose a sanction against either an SDA or SSG, in accordance with this section, may be appealed to the Secretary under the same terms and conditions as the disapproval of the respective plan, or plan modification, as set forth at § 628.426(e), Review and approval (section 164(b)(2)).

(c) If, upon a determination under paragraph (a)(2) of this section to impose a sanction under section 164(b) of the Act, the recipient fails to promptly take the actions required under paragraph (a)(2) of this section, the Secretary shall take such actions against the recipient or the SDA/SSG as appropriate (section 164(b)(3)).

### § 627.704 Process for waiver of State liability.

(a) A recipient may request a waiver of liability as described in section 164(e)(2) of the Act.

(b)(1) When the debt for which a waiver of liability is desired was established in a non-Federal resolution, such requests shall be accompanied by a resolution report.

(2) When the ETA Grant Officer is resolving the finding(s) for which a waiver of liability is desired, such request shall be made no later than the informal resolution period described in § 627.606(c) of this part.

(c) A waiver of the recipient’s liability can only be considered by the Grant Officer when the misexpenditure of JTPA funds:

(1) Occurred at a subrecipient level;  
 (2) Was not a violation of section 164(e)(1) of the Act, or did not constitute fraud; or

(3) If fraud did exist, it was perpetrated against the recipient/subrecipient; and:

(i) The recipient/subrecipient discovered, investigated, reported, and prosecuted the perpetrator of said fraud; and

(ii) After aggressive debt collection action, it can be documented that there is no likelihood of collection from the perpetrator of the fraud.

(4) The recipient has issued a final determination which disallows the misexpenditure, the recipient's appeal process has been exhausted, and a debt has been established; and

(5) The recipient requests such a waiver and provides documentation to demonstrate that it has substantially complied with the requirements of section 164(e)(2)(A), (B), (C), and (D) of the Act.

(d) The recipient shall not be released from liability for misspent funds under the determination required by section 164(e) of the Act unless the Grant Officer determines that further collection action, either by the recipient or subrecipient, would be inappropriate or would prove futile.

**§ 627.706 Process for advance approval of a recipient's contemplated corrective actions.**

(a) The recipient may request advance approval from the Grant Officer for contemplated corrective actions, including debt collection actions, which the recipient plans to initiate or to forego. The recipient's request shall include a description and an assessment of all actions taken by the subrecipient to collect the misspent funds.

(b) Based on the recipient's request, the Grant Officer may determine that the recipient may forego certain collection actions against a subrecipient where:

(1) The subrecipient was not at fault with respect to the liability criteria set forth in section 164(e)(2)(A), (B), (C), and (D) of the Act;

(2) The misexpenditure of funds:

(i) Was not made by that subrecipient but by an entity that received JTPA funds from that subrecipient;

(ii) Was not a violation of section 164(e)(1) of the Act, or did not constitute fraud; or

(iii) If fraud did exist, it was perpetrated against the subrecipient, and:

(A) The subrecipient discovered, investigated, reported, and prosecuted the perpetrator of said fraud; and

(B) After aggressive debt collection action, it can be documented that there is no likelihood of collection from the perpetrator of the fraud.

(3) A final determination which disallows the misexpenditure and establishes a debt has been issued at the appropriate level;

(4) Final action within the recipient's appeal system has been completed; and

(5) Further debt collection action by that subrecipient or the recipient would be either inappropriate or futile.

**§ 627.708 Offset process.**

(a) In accordance with section 164(d) of the Act, the primary sanction for misexpenditure of JTPA funds is repayment.

(b) A recipient may request that a debt, or a portion thereof, be offset against amounts allotted to the recipient, and retained at the recipient level for administrative costs, under the current or a future JTPA entitlement.

(1) For title II grants, any offset shall be applied against the recipient level 5 percent administrative cost set-aside only and may not be distributed by the recipient among its subrecipients.

(2) For title III grants, any such offset must be applied against that portion of funds reserved by the recipient for recipient level administration only and may not be distributed by the recipient among its subrecipients.

(c) The Grant Officer may approve an offset request, under section 164(d) of the Act, if the misexpenditures were not in violation of section 164(e)(1) of the Act.

(d) If offset is granted, the debt shall not be fully satisfied until the Grant Officer reduces amounts allotted to the State by the amount of the misexpenditure.

(e) The recipient shall not have the authority to reduce allocations to an

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SDA or SSG for misexpenditure of JTPA funds under section 164(d) of the Act.

### Subpart H—Hearings by the Office of Administrative Law Judges

#### § 627.800 Scope and purpose.

(a) The jurisdiction of the Office of the Administrative Law Judges (OALJ) extends only to those complainants identified in sections 141(c), 144(d), 164(f), and 166(a) of the Act.

(b) Actions arising under section 167 of the Act shall be handled under 29 CFR part 34.

(c) All other disputes arising under the Act shall be adjudicated under the appropriate recipient or subrecipient grievance procedures or other applicable law.

#### § 627.801 Procedures for filing request for hearing.

(a) Within 21 days of receipt of a final determination imposing a sanction or corrective action or denying financial assistance, the applicant, the recipient, the SDA, the SSG, or other subrecipient, or a vendor against which the Grant Officer has imposed a sanction or corrective action may appeal the Grant Officer's determination to the OALJ. A request for a hearing shall be transmitted by certified mail, return receipt requested, to the Chief Administrative Law Judge, U.S. Department of Labor, 800 K Street, NW., Suite 400, Washington, DC 20001, with one copy to the departmental official who issued the determination.

(b) The 21-day filing requirement in paragraph (a) of this section is jurisdictional. Failure to timely request a hearing acts as a waiver of the right to hearing.

(c) A request for a hearing under this section shall state specifically those issues of the final determination upon which review is requested. Those provisions of the final determination not specified for review, or the entire final determination when no hearing has been requested within the 21 days, shall be considered resolved and not subject to further review. Only alleged violations of the Act, regulations promulgated thereunder, grant or other agreement under the Act fairly raised in the

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determination and the request for hearing are subject to review.

(d) The procedures set forth in this subpart apply in the case of a complainant who has not had a dispute adjudicated under the alternative dispute resolution process set forth in § 627.805 of this part within 60 days, except that the request for hearing before the OALJ must be filed within 15 days of the conclusion of the 60-day period. In addition to including the final determination upon which review is requested, the complainant shall include a copy of any Stipulation of Facts and a brief summary of proceedings.

#### § 627.802 Rules of procedure.

(a) The rules of practice and procedure promulgated by the OALJ, at subpart A of 29 CFR part 18, shall govern the conduct of hearings under this section, except that a request for hearing under this section shall not be considered a complaint to which the filing of an answer by DOL or a DOL agency or official is required. Technical rules of evidence shall not apply to hearings conducted pursuant to this part; however, rules or principles designed to assure production of the most credible evidence available and to subject testimony to cross-examination shall apply.

(b) *Prehearing procedures.* In all cases, the ALJ should encourage the use of prehearing procedures to simplify and to clarify facts and issues.

(c) *Subpoenas.* Subpoenas necessary to secure the attendance of witnesses and the production of documents or things at hearings shall be obtained from the ALJ and shall be issued pursuant to the authority contained in section 163(b) of the Act, incorporating 15 U.S.C. 49.

(d) *Timely submission of evidence.* The ALJ shall not permit the introduction at the hearing of any documentation if such documentation has not been made available for review by the other parties to the proceeding either at the time ordered for any prehearing conference, or, in the absence of such an order, at least 3 weeks prior to the hearing date.

(e) *Burden of production.* The Grant Officer shall have the burden of production to support her or his decision. To

this end, the Grant Officer shall prepare and file an administrative file in support of the decision which shall be made part of the record. Thereafter, the party or parties seeking to overturn the Grant Officer's decision shall have the burden of persuasion.

**§ 627.803 Relief.**

In ordering relief, the ALJ shall have the full authority of the Secretary under section 164 of the Act.

**§ 627.804 Timing of decisions.**

The ALJ should render a written decision not later than 90 days after the closing of the record.

**§ 627.805 Alternative dispute resolution.**

(a) Parties to a complaint under § 627.801 of this part, Procedures for filing a request for hearing, may choose to waive their rights to an administrative hearing before the OALJ by choosing to transfer the settlement of their dispute to an individual acceptable to all parties for the purpose of conducting an informal review of the stipulated facts and rendering a decision in accordance with applicable law. A written decision will be issued within 60 days after the matter is submitted for informal review.

(b) The waiver of the right to request a hearing before the OALJ may be revoked if a settlement has not been reached or a decision has not been issued within the 60 days provided in paragraph (a) of this section.

(c) The decision rendered under this informal review process shall be treated as a final decision of an Administrative Law Judge pursuant to section 166(b) of the Act.

**§ 627.806 Other authority.**

Nothing contained in this subpart shall be deemed to prejudice the separate exercise of other legal rights in pursuit of remedies and sanctions available outside the Act.

**Subpart I—Transition Provisions**

**§ 627.900 Scope and purpose.**

(a) Regulations set forth at parts 626, 627, 628, 629, 630, 631, and 637 of 20 CFR chapter V (1993) were amended, effec-

tive December 29, 1992, and were published as an interim final rule to provide planning guidance for States and SDA's on the changes made to the JTPA program as a result of the 1992 JTPA amendments (See 57 FR 62004 (December 29, 1992)). The transition provisions of the regulations were amended on June 3, 1992 (see 58 FR 31472, June 3, 1993). Those regulations and the statutory amendments were effective for the program year beginning July 1, 1993 (PY 1993), and succeeding program years. For PY 1992, JTPA programs and activities shall continue under the regulations set forth at 20 CFR parts 626, 627, 628, 629, 630, 631, and 637 (1992).

(b) In order to provide for the orderly transition to and implementation of the provisions of JTPA, as amended by the 1992 amendments, this subpart I applies to the use of JTPA title II and title III funds allotted by formula to the States. Additional guidance on transition matters may be provided in administrative issuances. The provisions in this subpart are operational during the transition period for implementing the 1992 JTPA amendments.

**§ 627.901 Transition period.**

The transition period ended June 30, 1993 unless otherwise stated. The intent of the transition period is to complete, to the extent possible, activity begun on or before June 30, 1993 under current policy and regulations and to ensure that all requirements mandated by the 1992 JTPA amendments have been implemented.

**§ 627.902 Governor's actions.**

The following are actions required to be taken prior to July 1, 1993:

(a) Review current policies, practices, procedures, and delivery systems to ensure that they conform to the requirements of the amendments;

(b) Modify the Governor's coordination and special services plan in accordance with instructions issued by the Secretary;

(c) Ensure that SDAs modify job training plans as necessary;

(d) Execute a new Governor/Secretary agreement and a new grant agreement;

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(e) Issue procurement standards that comply with the Act and these regulations, as described in § 627.420 of this part, Procurement;

(f) Issue instructions necessary to implement program year 1993 cost categories pursuant to § 627.440 of this part, Classification of costs;

(g) Issue instructions necessary for SDAs to report program expenditures by year of appropriation pursuant to § 627.455 of this part, Reports required;

(h) Certify private industry councils pursuant to § 628.410 of this chapter, Private Industry Council.

### § 627.903 Actions which are at the discretion of the Governor.

(a) Establish a State Human Resource Investment Council (HRIC);

(b) Issue instructions to "grandparent" participants in JTPA programs as of June 30, 1993 for purposes of completing training;

(c) Issue instructions for use of PY 1992 and prior year 6 percent performance standards incentive funds to further develop and implement data collection and management information systems to track the program experience of participants. PY 1993 and subsequent performance standards incentive funds may not be used for this purpose;

(d) Of the Title II and Title III unobligated balance of funds available as of June 30, 1993, any amount may be reprogrammed into PY 1993 activity. The Department believes these amounts will be minimal and not represent a significant proportion of the funds available. Such reprogrammed funds will be subject to requirements contained in JTPA regulations effective July 1, 1993.

### § 627.904 Transition and implementation.

(a) *Review.* The Governor shall conduct a comprehensive review of the current policies, procedures, and delivery systems relating to programs authorized under the Job Training Partnership Act for the purpose of ensuring the effective implementation of the amendments. Such a review shall include consideration of the appropriateness of current SDA designations, the representation on current State and

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local councils, the adequacy of current administrative systems, the effectiveness of current outreach, service delivery, and coordination activities, and other relevant matters.

(b) *Governor's Coordination and Special Services Plan (GCSSP).* The GCSSP requires modification to assure conformance to the requirements of the amendments. The plan was to be modified pursuant to instructions issued by the Secretary and shall be submitted to the Secretary for review by May 15, 1993.

(c) *Job training plans.* Service delivery area job training plans will require modification to comply with § 628.420 of this chapter, Job training plan.

(d) *Governor/Secretary agreement and grant agreement.* A new Governor/Secretary agreement is required to assure that the State shall comply with JTPA, as amended, and the applicable rules and regulations; the Wagner-Peyser Act, as amended, and the applicable rules and regulations. A new grant agreement is needed to provide the basis for Federal obligation of funds for programs authorized by Titles I, II, and III, and such other funds as the Secretary may award under the grant.

(e) *Procurement standards.* In order to ensure fiscal accountability and prevent waste, fraud, and abuse in programs administered under JTPA, as amended, the Governor shall prescribe and implement procurement standards meeting the requirements of § 627.420 of this part, Procurement. All procurements initiated on or after July 1, 1993 shall be governed by and follow the requirements in § 627.420 of this part. Initiation of procurement means any sole source or small purchase awarded on or after July 1, 1993 and any Invitation for Bid or Request for Proposal issued on or after July 1, 1993.

(f) *Participants.* In order to have the least possible disruption to program participants, during PY 1993, Governors and SDAs have the flexibility to grandfather participants already enrolled in JTPA programs up to and including June 30, 1993 under existing rules and regulations. All participants in programs on June 30, 1993, will be eligible for transfer to programs operated under the new provisions at any time

beginning on July 1, 1993. "Hard to serve" barriers to participation, assessment and Individual Service Strategy provisions of the amendments will not apply to participants enrolled prior to July 1, 1993 or to 1993 Title II-B participants.

(g) *Cost categories.* (1) Cost categories applicable to PY 1992 and earlier funds will be subject to prior regulations either until the funds have been exhausted or program activity has been completed. In order to assist the orderly transition to and implementation of the new requirements of the 1992 JTPA amendments, an increase is allowed in the administrative cost limitation for PY 1992 funds from 15 percent to 20 percent, with a corresponding adjustment to cost limitations for training and participant support. Specifically, not less than 80 percent of the title II-A funds shall be expended for training and participant support, and not less than 65 percent shall be expended for training.

(2) Any prior year's carryover funds made available for use in PY 1993 will be subject to the reporting requirements and cost categories applicable to PY 1993 funds.

(3) In determining compliance with the JTPA cost limitations for PY 1992, Governors may either:

(i) Determine cost limitation compliance separately for funds expended in accordance with paragraphs (g)(1) and (g)(2) of this section; or

(ii) Determine compliance for each cost category against the total PY 1992 funds, whether expended in accordance with the Act and regulations in effect prior to the 1992 amendments to JTPA or in accordance with the amended Act and these regulations. Using this option, the total combined funds expended for training and direct training should be at least 65 percent of PY 1992 SDA allocations.

(4) In addition to the institutions specified in §627.440(d)(1)(vi)(B), the costs of tuition and entrance fees of a postsecondary vocational institution specified at section 481(c) of the Higher Education Act (20 U.S.C. 1088(c)) may be charged to direct training services through June 30, 1995, when such tuition charges or entrance fees are not more than the educational institu-

tion's catalog price, are necessary to receive specific training, are charged to the general public to receive such training, and are for the training of participants.

(h) *Financial reporting.* Notwithstanding reprogramming, expenditures must be recorded separately by year of appropriation.

(i) *Private Industry Council.* The private industry councils shall be certified pursuant to §628.410 of this chapter, Private Industry Council.

(j) *Grievances, investigations, and hearings.* Generally, all grievances, investigations and hearings pending on or before June 30, 1993 should be resolved and settled under prior rules and procedures. Grievances, investigations, and hearings occurring on or after July 1, 1993 will be governed by the procedures described in subparts E, F, and H of this part 627.

(k) *Summer program.* (1) The Title II-B Summer Youth Employment Program for 1993 shall be governed by the Act and regulations in effect prior to the Amendments (prior to September 7, 1992).

(2) Up to 10 percent of the 1993 title II-B funds available may be transferred to the title II-C program.

(l) *SDA designation.* At the Governor's discretion, SDA's designated prior to July 1, 1992 need not be subject to the provisions of §628.405, Service delivery areas.

(m) *Program implementation.* The implementation by the States and SDA's of certain new program design requirements, particularly objective assessment and development of individual service strategies (ISS), may require additional time to fully implement beyond July 1, 1993. Reasonable efforts to implement the provisions of §§628.515, 628.520, and 628.530, as soon as possible after July 1, 1993, are expected to be made. However, it is not expected that every new participant will initially receive objective assessment, ISS, and referral to non-title II services for a period of 6 months, or until January 1, 1994.

(n) *Out-of-school youth ratio.* The 50-percent out-of-school participants requirement for title II-C will be phased in during PY 1993 and will not be the subject of compliance review until PY

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1994, beginning July 1, 1994. During PY 1993, however, SDA's must show significant improvement in the proportion of out-of-school youth being served and performance in increasing the service ratio will be monitored by the States and DOL during this implementation period.

(o) *Administrative issuances.* Other implementation issues may be handled by administrative issuance. ETA will transmit such guidance directly to all Governors via a Training and Employment Guidance Letter (TEGL). Such TEGL's will be published as Notices in the FEDERAL REGISTER (section 701(i)).

**§ 627.905 Guidance on contracts and other agreements.**

The Department does not intend for contracts, agreements, inter-agency agreements, retainers, and similar arrangements to be negotiated and/or entered into for the sole purpose of applying previously existing rules and regulations. The 1992 JTPA amendments were effective July 1, 1993. The Department intends that contracts, awards and agreements entered into on or before June 30, 1993 are to be used to serve and/or train participants enrolled on or before June 30, 1993, unless the contracts and agreements are modified to comply with the new amendments and regulations.

**§ 627.906 Determinations on State and SDA implementation.**

(a) The Department expects that the States and SDA's will fully implement the provisions of the Act and these regulations regarding procurement, cost principles, cost categories, cost limitations, participant service requirements and eligibility beginning July 1, 1993.

(b) The Department expects that the implementation by the States and SDA's of the program design features in these regulations, particularly objective assessment and development of the ISS, may require additional time beyond July 1, 1993 to fully implement.

(c) In deciding to allow or disallow questioned costs related to the implementation of the provisions described in paragraph (b) of this section, the Grant Officer will consider the extent to which the State's and SDA's have made good faith efforts in properly im-

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plementing such provisions in the period July 1, 1993 through June 30, 1994.

**PART 628—PROGRAMS UNDER TITLE II OF THE JOB TRAINING PARTNERSHIP ACT**

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**Subpart B—State Planning**

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