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PART 641—PROVISIONS GOVERNING THE SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM

Subpart A—Purpose and Definitions

Sec.
641.100 What does this part cover?
641.110 What is the SCSEP?
641.120 What are the purposes of the SCSEP?
641.130 What is the scope of this part?
641.140 What definitions apply to this part?

Subpart B—Coordination With the Workforce Investment Act

641.200 What is the relationship between the SCSEP and the Workforce Investment Act?
641.210 What services, in addition to the applicable core services, must SCSEP grantees provide through the One-Stop Delivery System?
641.220 Does title I of WIA require the SCSEP to use OAA funds for individuals who are not eligible for SCSEP services or for services that are not authorized under the OAA?
641.230 Must the individual assessment conducted by the SCSEP grantee and the assessment performed by the One-Stop Delivery System be accepted for use by either entity to determine the individual's need for services in the SCSEP and adult programs under title IB of WIA?
641.240 Are SCSEP participants eligible for intensive and training services under title I of WIA?

Subpart C—The State Senior Employment Services Coordination Plan

641.300 What is the State Plan?
641.305 Who is responsible for developing and submitting the State Plan?
641.310 May the Governor delegate responsibility for developing and submitting the State Plan?
641.315 Who participates in developing the State Plan?
641.320 Must all national grantees operating within a State participate in the State planning process?
641.325 What information must be provided in the State Plan?
641.330 How should the State Plan reflect community service needs?
641.335 How should the Governor address the coordination of SCSEP services with activities funded under title I of WIA?
641.340 Must the Governor submit a State Plan each year?
641.345 What are the requirements for modifying the State Plan?
641.350 How should public comments be solicited and collected?
641.355 Who may comment on the State Plan?
641.360 How does the State Plan relate to the equitable distribution (ED) report?
641.365 How must the equitable distribution provisions be reconciled with the provision that disruptions to current participants should be avoided?

Subpart D—Grant Application, Eligibility, and Award Requirements

641.400 What entities are eligible to apply to the Department for funds to administer SCSEP community service projects?
641.410 How does an eligible entity apply?
641.420 What factors will the Department consider in selecting grantees?
641.430 What are the eligibility criteria that each applicant must meet?
641.440 What are the responsibility conditions that an applicant must meet?
641.450 Are there responsibility conditions that alone will disqualify an applicant?
641.460 How will the Department examine the responsibility of eligible entities?
641.465 Under what circumstances may the Department reject an application?
641.470 What happens if an applicant's application is rejected?
641.480 May the Governor make recommendations to the Department on grant applications?
641.490 When may SCSEP grants be awarded competitively?

Subpart E—Services to Participants

641.500 Who is eligible to participate in the SCSEP?
641.505 When is eligibility determined?
641.507 What types of income are included and excluded for participant eligibility determinations?
641.510 What happens if a grantee/subgrantee determines that a participant is no longer eligible for the SCSEP due to an increase in family income?
641.515 How must grantees/subgrantees recruit and select eligible individuals for participation in the SCSEP?
641.520 Are there any priorities that grantees/subgrantees must use in selecting eligible individuals for participation in the SCSEP?
641.525 Are there any other groups of individuals who should be given special consideration when selecting SCSEP participants?
641.530 Must the grantee/subgrantee always select priority or preference individuals?

641.535 What services must grantees/subgrantees provide to participants?
641.540 What types of training may grantees/subgrantees provide to SCSEP participants?
641.545 What supportive services may grantees/subgrantees provide to participants?
641.550 What responsibility do grantees/subgrantees have to place participants in unsubsidized employment?
641.555 What responsibility do grantees have to participants who have been placed in unsubsidized employment?
641.560 May grantees place participants directly into unsubsidized employment?
641.565 What policies govern the provision of wages and fringe benefits to participants?
641.570 Is there a time limit for participation in the program?
641.575 May a grantee establish a limit on the amount of time its participants may spend at each host agency?
641.580 Under what circumstances may a grantee terminate a participant?
641.585 Are participants employees of the Federal Government?
641.590 Are participants employees of the grantee, the local project, and/or the host agency?

Subpart F—Private Sector Training Projects Under Section 502(e) of the OAA

641.600 What is the purpose of the private sector training projects authorized under section 502(e) of the OAA?
641.610 How are section 502(e) activities administered?
641.620 How may an organization apply for section 502(e) funding?
641.630 What private sector training activities are allowable under section 502(e)?
641.640 How do the private sector training activities authorized under section 502(e) differ from other SCSEP activities?
641.650 Does the requirement that not less than 75 percent of the funds be used to pay participant wages and fringe benefits apply to section 502(e) activities?
641.660 Who is eligible to participate in section 502(e) private sector training activities?
641.665 When is eligibility determined?
641.670 May an eligible individual be enrolled simultaneously in section 502(e) private sector training activities operated by one grantee and a community service SCSEP project operated by a different SCSEP grantee?
641.680 How should grantees report on participants who are co-enrolled?
641.690 How is the performance of section 502(e) grantees measured?

Subpart G—Performance Accountability

641.700 What performance measures/indicators apply to SCSEP grantees?
641.710 How are the performance indicators defined?
641.720 How will the Department and grantees initially determine and then adjust expected levels of performance for the core performance measures?
641.730 How will the Department assist grantees in the transition to the new core performance indicators?
641.740 How will the Department determine whether a grantee fails, meets, or exceeds the expected levels of performance for the core indicators and what will be the consequences of failing to meet expected levels of performance?
641.750 Will there be performance-related incentives?

Subpart H—Administrative Requirements

641.800 What uniform administrative requirements apply to the use of SCSEP funds?
641.803 What is program income?
641.806 How must SCSEP program income be used?
641.809 What non-Federal share (matching) requirements apply to the use of SCSEP funds?
641.812 What is the period of availability of SCSEP funds?
641.815 May the period of availability be extended?
641.818 What happens to funds that are unexpended at the end of the Program Year?
641.821 What audit requirements apply to the use of SCSEP funds?
641.824 What lobbying requirements apply to the use of SCSEP funds?
641.827 What general nondiscrimination requirements apply to the use of SCSEP funds?
641.833 What policies govern political patronage?
641.836 What policies govern political activities?
641.839 What policies govern union organizing activities?
641.841 What policies govern nepotism?
641.844 What maintenance of effort requirements apply to the use of SCSEP funds?
641.847 What uniform allowable cost requirements apply to the use of SCSEP funds?
641.850 Are there other specific allowable and unallowable cost requirements for the SCSEP?
641.853 How are costs classified?
641.856 What functions and activities constitute costs of administration?

641.859 What other special rules govern the classification of costs as administrative costs or program costs?
641.861 Must SCSEP recipients provide funding for the administrative costs of subrecipients?
641.864 What functions and activities constitute program costs?
641.867 What are the limitations on the amount of SCSEP administrative costs?
641.870 Under what circumstances may the administrative cost limitation be increased?
641.873 What minimum expenditure levels are required for participant wages and fringe benefits?
641.876 When will compliance with cost limitations and minimum expenditure levels be determined?
641.879 What are the fiscal and performance reporting requirements for recipients?
641.881 What are the SCSEP recipient's responsibilities relating to awards to subrecipients?
641.884 What are the grant closeout procedures?

Subpart I—Grievance Procedures and Appeals Process

641.900 What appeal process is available to an applicant that does not receive a grant?
641.910 What grievance procedures must grantees make available to applicants, employees, and participants?
641.920 What actions of the Department may a grantee appeal and what procedures apply to those appeals?
641.930 Is there an alternative dispute resolution process that may be used in place of an OALJ hearing?

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Subpart A—Purpose and Definitions

§ 641.100 What does this part cover?

Part 641 contains the Department of Labor's regulations for the Senior Community Service Employment Program (SCSEP), authorized under the title V of the Older Americans Act, 42 U.S.C. 3056 *et seq.*, as amended by the Older Americans Act Amendments of 2000 (OAA), Public Law 106–501. This part, and other pertinent regulations expressly incorporated by reference, set forth the regulations applicable to the SCSEP.

(a) Subpart A of this part contains introductory provisions and definitions that apply to this part.

(b) Subpart B of this part describes the required relationship between the OAA and the Workforce Investment Act of 1998 (WIA), 29 U.S.C. 2801 *et seq.* These provisions discuss the coordinated efforts to provide services through the integration of the SCSEP within the One-Stop Delivery System.

(c) Subpart C of this part sets forth the requirements for the State Senior Employment Services Coordination Plan (State Plan), such as required coordination efforts, public comments, and equitable distribution.

(d) Subpart D of this part establishes grant planning and application requirements, including grantee eligibility, and responsibility review.

(e) Subpart E of this part details SCSEP participant services.

(f) Subpart F of this part provides the rules for projects designed to assure second career training and the placement of eligible individuals into unsubsidized jobs in the private sector.

(g) Subpart G of this part outlines the performance accountability requirements. This subpart establishes requirements for performance measures, defines such measures, and establishes corrective actions, including the imposition of sanctions for failure to meet performance measures.

(h) Subpart H of this part sets forth the administrative requirements for SCSEP grants.

(i) Subpart I of this part describes the grievance and appeals processes and requirements.

§ 641.110 What is the SCSEP?

The Senior Community Service Employment Program or the SCSEP is a program administered by the Department of Labor that serves low-income persons who are 55 years of age and older and who have poor employment prospects by placing them in part-time community service positions and by assisting them to transition to unsubsidized employment.

§ 641.120 What are the purposes of the SCSEP?

The purposes of the SCSEP are to foster and promote useful part-time opportunities in community service activities for unemployed low-income persons who are 55 years of age or older and who have poor employment prospects; to foster individual economic self-sufficiency; and to increase the number of older persons who may enjoy the benefits of unsubsidized employment in both the public and private sectors.

§ 641.130 What is the scope of this part?

The regulations in this part address the requirements that apply to the SCSEP. More detailed policies and procedures are contained in administrative guidelines issued by the Department. Throughout this part, phrases such as, ''according to instructions (procedures) issued by the Department'' or ''additional guidance will be provided through administrative issuance'' refer to the SCSEP Bulletins, technical assistance guides, and other SCSEP directives.

§ 641.140 What definitions apply to this part?

The following definitions apply to this part:

Additional indicators mean retention in unsubsidized employment for one year; and satisfaction of participants, employers and their host agencies with their experiences and the services provided and any other indicators of performance that the Secretary determines to be appropriate to evaluate services and performance. (§ 513(b)(2) as amended by Pub. L. 109–365).

At risk for homelessness means an individual is likely to become homeless and the individual lacks the resources and support networks needed to obtain housing.

Authorized position level means the number of SCSEP enrollment opportunities that can be supported for a 12-month period based on the average national unit cost. The authorized position level is derived by dividing the total amount of funds appropriated for a Program Year by the national average unit cost per participant for that Program Year as determined by the Department. The national average unit cost includes all costs of administration, other participant costs, and participant wage and fringe benefit costs as defined in section 506(g) of the OAA. A grantee's total award is divided by the national unit cost to determine the authorized position level for each grant agreement.

Co-enrollment applies to any individual who meets the qualifications for SCSEP participation as well as the qualifications for any other relevant program as defined in the Individual Employment Plan.

Community service includes, but is not limited to, social, health, welfare, and educational services (including literacy tutoring); legal assistance, and other counseling services, including tax counseling and assistance and financial counseling; library, recreational, and other similar services; conservation, maintenance, or restoration of natural resources; community betterment or beautification; anti-pollution and environmental quality efforts; weatherization activities; and economic development. (OAA sec. 516(1)).

Community service employment means part-time, temporary employment paid with grant funds in projects in host agencies through which eligible individuals are engaged in community service and receive work experience and job skills that can lead to unsubsidized employment. (§ 518(a)(2) as amended by Pub. L. 109–365).

Core indicators means hours (in the aggregate) of community service employment; entry into unsubsidized employment; retention in unsubsidized employment for six months; earnings; the number of eligible individuals served; and most-in-need (the number of individuals described in subsection (a)(3)(B)(ii) or (b)(2) of section 518 of the OAA). (§ 513(b)(1) as amended by Pub. L. 109–365).

Core services means those services described in section 134(d)(2) of WIA.

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

Disability means a disability attributable to mental or physical impairment, or a combination of mental and physical impairments, that results in

substantial functional limitations in one or more of the following areas of major life activity:

(1) Self-care;

(2) Receptive and expressive language;

(3) Learning;

(4) Mobility;

(5) Self-direction;

(6) Capacity for independent living;

(7) Economic self-sufficiency;

(8) Cognitive functioning; and

(9) Emotional adjustment.

(42 U.S.C. 3002(13)).

Equitable distribution report means a report based on the latest available Census data, which lists the optimum number of participant positions in each designated area in the State, and the number of authorized participant positions each grantee serves in that area, taking the needs of underserved counties into account. This report provides a basis for improving the distribution of SCSEP positions.

Frail means an individual 55 years of age or older who is determined to be functionally impaired because the individual—

(1)(i) Is unable to perform at least two activities of daily living without substantial human assistance, including verbal reminding, physical cueing, or supervision; or

(ii) At the option of the State, is unable to perform at least three such activities without such assistance; or

(2) Due to a cognitive or other mental impairment, requires substantial supervision because the individual behaves in a manner that poses a serious health or safety hazard to the individual or to another individual.

(42 U.S.C. 3002(22)).

Grant period means the time period between the effective date of the grant award and the ending date of the award, which includes any modifications extending the period of performance, whether by the Department's exercise of options contained in the grant agreement or otherwise. Also referred to as ''project period'' or ''award period.''

Grantee means an entity receiving financial assistance directly from the Department to carry out SCSEP activities. The grantee is the legal entity that receives the award and is legally responsible for carrying out the SCSEP, even if only a particular component of the entity is designated in the grant award document. Grantees include States, Tribal organizations, territories, public and private nonprofit organizations, agencies of a State government or a political subdivision of a State, or a combination of such political subdivisions that receive SCSEP grants from the Department. (OAA sec. 502). In the case of the section 502(e) projects, grantee may be used to include private business concerns. As used here, ''grantees'' include ''grantees'' as defined in 29 CFR 97.3 and ''recipients'' as defined in 29 CFR 95.2(g).

Greatest economic need means the need resulting from an income level at or below the poverty guidelines established by the Department of Health and Human Services and approved by the Office of Management and Budget. (OAA sec. 101(27)).

Greatest social need means the need caused by non-economic factors, which include: physical and mental disabilities; language barriers; and cultural, social, or geographical isolation, including isolation caused by racial or ethnic status that restricts the ability of an individual to perform normal daily tasks, or threatens the capacity of the individual to live independently. (OAA sec. 101(28)).

Homeless includes

(1) An individual who lacks a fixed, regular, and adequate nighttime residence; and

(2) An individual who has a primary nighttime residence that is:

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodations for human beings.

(42 U.S.C. 11302(a)).

Host agency means a public agency or a private nonprofit organization exempt from taxation under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986, other than a political party, which provides a work site and supervision for one or more participants. (See also OAA sec. 502(b)(1)(C)). A host agency may be a religious organization as long as the projects do not involve the construction, operation, or maintenance of any facility used or to be used as a place for religious instruction or worship.

Indian means a person who is a member of an Indian Tribe. (OAA sec. 101(5)).

Indian Tribe means any Tribe, band, nation, or other organized group or community of Indians (including Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act) which:

(1) Is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or

(2) Is located on, or in proximity to, a Federal or State reservation or rancheria. (OAA sec. 101(6)).

Individual employment plan or IEP means a plan for a participant that includes an employment goal, achievement of objectives, and appropriate sequence of services for the participant based on an assessment conducted by the grantee or subgrantee and jointly agreed upon by the participant. (OAA sec. 502(b)(1)(N)).

Intensive services means those services authorized by section 134(d)(3) of the Workforce Investment Act.

Jobs for Veterans Act means the program established in section 2 of Public Law 107–288 (2002) (38 U.S.C. 4215), that provides a priority for veterans and the spouse of a veteran who died in a service-connected disability, the spouse of a member of the Armed Forces on active duty who has been listed for a total of more than 90 days as missing in action, captured in the line of duty by a hostile force, or forcibly detained by a foreign government or power, the spouse of any veteran who has a total disability resulting from a service-connected disability, and the spouse of any veteran who died while a disability so evaluated was in existence, who meet program eligibility requirements to receive services in any Department of Labor-funded workforce development program.

Limited English proficiency means individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English.

Local Workforce Investment Area or local area means an area established by the Governor of a State under section 116 of the Workforce Investment Act.

Local Board means a Local Workforce Investment Board established under section 117 of the Workforce Investment Act.

Low employment prospects means the likelihood that an individual will not obtain employment without the assistance of the SCSEP or another workforce development program. Persons with low employment prospects have a significant barrier to employment. Significant barriers to employment may include but are not limited to: Lacking a substantial employment history, basic skills, and/or English-language proficiency; lacking a high school diploma or the equivalent; having a disability; being homeless; or residing in socially and economically isolated rural or urban areas where employment opportunities are limited.

Low literacy skills means the individual computes or solves problems, reads, writes, or speaks at or below the 8th grade level or is unable to compute or solve problems, read, write, or speak at a level necessary to function on the job, in the individual's family, or in society.

Most-in-need means participants with one or more of the following characteristics: Have a severe disability; are frail; are age 75 or older; are age-eligible but not receiving benefits under title II of the Social Security Act; reside in an area with persistent unemployment and have severely limited employment prospects; have limited English proficiency; have low literacy skills; have a disability; reside in a rural area; are veterans; have low employment prospects; have failed to find employment after utilizing services provided under title I of the Workforce Investment Act of 1998 (29 U.S.C. 2801 *et*

seq.); or are homeless or at risk for homelessness. (Older Americans Act (OAA) section 513(b)(1)(E) as amended by Pub. L. 109–365).

National grantee means a public or non-profit private agency or organization, or Tribal organization, that receives a grant under title V of the OAA (42 U.S.C. 3056 *et seq.*) to administer a SCSEP project. (*See* OAA section 506(g)(5) as amended by Pub. L. 109–365).

OAA means the Older Americans Act as amended by the Older Americans Act Amendments of 2000 (Pub. L. 106–501; 42 U.S.C. 3056 *et seq.*).

One-Stop Center means the One-Stop Center system in a WIA Local Area which must include a comprehensive One-Stop Center through which One-Stop partners provide applicable core services and which provides access to other programs and services carried out by the One-Stop partners. (See WIA sec. 134(c)(2)).

One-Stop Delivery System means a system under which employment and training programs, services, and activities are available through a network of eligible One-Stop partners, which assures that information about and access to core services is available regardless of where the individuals initially enter the statewide workforce investment system. (WIA sec. 134(c)(2)).

One-Stop partner means an entity described in section 121(b)(1) of the Workforce Investment Act; *i.e.*, required partners, and an entity described in section 121(b)(2) of the Workforce Investment Act, *i.e.*, additional partners.

Other participant (enrollee) cost means the cost of participant training, including the payment of reasonable costs to instructors, classroom rental, training supplies, materials, equipment, and tuition, and which may be provided on the job or in conjunction with a community service assignment, in a classroom setting, or under other appropriate arrangements; job placement assistance, including job development and job search assistance; participant supportive services to assist a participant to successfully participate in a project, including the payment of reasonable costs of transportation, health care and medical services, special job-related or personal counseling, incidentals (such as work shoes, badges, uniforms, eyeglasses, and tools), child and adult care, temporary shelter, and follow-up services; and outreach, recruitment and selection, intake orientation, and assessments. (OAA sec. 502(c)(6)(A)).

Participant means an individual who is eligible for the SCSEP, has been enrolled and is receiving services as prescribed under subpart E of this part.

Persistent unemployment means that the annual average unemployment rate for a county or city is more than 20 percent higher than the national average for two out of the last three years.

Placement into public or private unsubsidized employment means full- or part-time paid employment in the public or private sector by a participant for 30 days within a 90-day period without the use of funds under title V or any other Federal or State employment subsidy program, or the equivalent of such employment as measured by the earnings of a participant through the use of wage records or other appropriate methods. (OAA sec. 513(c)(2)(A)).

Poor employment prospects means the likelihood that an individual will not obtain employment without the assistance of the SCSEP or any other workforce development program. Persons with poor employment prospects include, but are not limited to, those without a substantial employment history, basic skills, and/or English-language proficiency; displaced homemakers, school dropouts, persons with disabilities, including disabled veterans, homeless individuals, and individuals residing in socially and economically isolated rural or urban areas where employment opportunities are limited.

Program year means the one-year period beginning July 1 and ending on June 30. (OAA sec. 515(b)).

Project means an undertaking by a grantee or subgrantee according to a grant agreement that provides community service, training, and employment opportunities to eligible individuals in a particular location within a State.

Recipient means grantee. As used here, ''recipients'' include ''recipients'' as defined in 29 CFR 95.2(g) and ''grantees'' as defined in 29 CFR 97.3.

Residence means an individual's declared dwelling place or address as

demonstrated by appropriate documentation.

Retention in public or private unsubsidized employment means full- or part-time paid employment in the public or private sector by a participant for 6 months after the starting date of placement into unsubsidized employment without the use of funds under title V or any other Federal or State employment subsidy program. (OAA sec. 513(c)(2)(B)).

Rural means an area not designated as a metropolitan statistical area by the Census Bureau; segments within metropolitan counties identified by codes 4 through 10 in the Rural Urban Commuting Area (RUCA) system; and RUCA codes 2 and 3 for census tracts that are larger than 400 square miles and have population density of less than 30 people per square mile.

SCSEP means the Senior Community Service Employment Program authorized under title V of the OAA.

Service area means the geographic area served by a local SCSEP project.

Severe disability means a severe, chronic disability attributable to mental or physical impairment, or a combination of mental and physical impairments, that—

(1) Is likely to continue indefinitely; and

(2) Results in substantial functional limitation in 3 or more of the following areas of major life activity:

(i) Self-care;

(ii) Receptive and expressive language;

(iii) Learning;

(iv) Mobility;

(v) Self-direction;

(vi) Capacity for independent living;

(vii) Economic self-sufficiency.

(42 U.S.C. 3002(48)).

Severely limited employment prospects means a substantially higher likelihood that an individual will not obtain employment without the assistance of the SCSEP or another workforce development program. Persons with severely limited employment prospects have more than one significant barrier to employment; significant barriers to employment may include but are not limited to: Lacking a substantial employment history, basic skills, and/or English-language proficiency; lacking a high school diploma or the equivalent; having a disability; being homeless; or residing in socially and economically isolated rural or urban areas where employment opportunities are limited.

State Workforce Agency means the State agency that administers the State Wagner-Peyser program.

State Board means a State Workforce Investment Board established under section 111 of the Workforce Investment Act.

State grantee means the entity designated by the Governor to enter into a grant with the Department to administer a State or territory SCSEP project under the OAA. Except as applied to funding distributions under section 506 of the OAA, this definition applies to the 50 States, Puerto Rico, the District of Columbia and the following territories: Guam, American Samoa, U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

State Plan means the State Senior Employment Services Coordination Plan required under section 503(a) of the OAA.

Subgrantee means the legal entity to which a subaward of financial assistance, which may include a subcontract, is made by the grantee (or by a higher tier subgrantee or recipient), and that is accountable to the grantee for the use of the funds provided. As used here, ''subgrantee'' includes ''subgrantees'' as defined in 29 CFR 97.3 and ''subrecipients'' as defined in 29 CFR 95.2(kk).

Subrecipient means a subgrantee.

Title V of the OAA means 42 U.S.C. 3056 *et seq*. or title V of Public Law 106–501.

Training services means those services authorized by section 134(d)(4) of the Workforce Investment Act.

Tribal organization means the recognized governing body of any Indian Tribe, or any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body. (OAA sec. 101(7)).

Veteran means an individual who is a ''covered person'' for purposes of the Jobs for Veterans Act, 38 U.S.C. 4215(a)(1).

Workforce Investment Act or WIA means the Workforce Investment Act of 1998 (Public Law 105–220—Aug. 7, 1998; 112 Stat. 936); 29 U.S.C. 2801 *et seq.*

Workforce Investment Act regulations or WIA regulations means regulations at 20 CFR part 652 and parts 660–671.

[69 FR 19051, Apr. 9, 2004, as amended at 72 FR 35845, June 29, 2007]

Subpart B—Coordination With the Workforce Investment Act

§ 641.200 What is the relationship between the SCSEP and the Workforce Investment Act?

The SCSEP is a required partner under the Workforce Investment Act. As such, it is a part of the One-Stop Delivery System. SCSEP grantees are required to follow all applicable rules under WIA and its regulations. (WIA section 121(b)(1)(B)(vi) (29 U.S.C. 2841(b)(1)(B)(vi)) and the 29 CFR part 662 subpart B (§§ 662.200 through 662.280))

§ 641.210 What services, in addition to the applicable core services, must SCSEP grantees provide through the One-Stop Delivery System?

In addition to providing core services, SCSEP grantees must make arrangements through the One-Stop Delivery System to provide eligible and ineligible individuals with access to other activities and programs carried out by other One-Stop partners.

§ 641.220 Does title I of WIA require the SCSEP to use OAA funds for individuals who are not eligible for SCSEP services or for services that are not authorized under the OAA?

No, SCSEP requirements continue to apply. Title V resources may only be used to provide title V services to title V-eligible individuals. The Workforce Investment Act creates a seamless service delivery system for individuals seeking workforce development services by linking the One-Stop partners in the One-Stop Delivery System. Although the overall effect is to provide universal access to core services, SCSEP resources may only be used to provide services that are authorized and provided under the SCSEP to eligible individuals. Title V funds can be used to pay wages to SCSEP participants receiving intensive and training services under title I of WIA provided that the SCSEP participants are functioning in a community service assignment. All other individuals who are in need of the services provided under the SCSEP, but who do not meet the eligibility criteria to enroll in the SCSEP, should be referred to or enrolled in WIA or other appropriate partner programs. (WIA sec. 121(b)(1)). These arrangements should be negotiated in the MOU.

§ 641.230 Must the individual assessment conducted by the SCSEP grantee and the assessment performed by the One-Stop Delivery System be accepted for use by either entity to determine the individual's need for services in the SCSEP and adult programs under title IB of WIA?

Yes, section 502(b)(4) of the OAA provides that an assessment or IEP completed by the SCSEP satisfies any condition for an assessment, service strategy, or IEP completed at the One-Stop and vice-versa. These reciprocal arrangements and the contents of the SCSEP IEP and WIA IEP should be negotiated in the MOU. (OAA sec. 502(b)(4)).

§ 641.240 Are SCSEP participants eligible for intensive and training services under title I of WIA?

(a) Yes, although SCSEP participants are not automatically eligible for intensive and training services under title I of WIA, Local Boards may deem SCSEP participants, either individually or as a group, as satisfying the requirements for receiving adult intensive and training services under title I of WIA.

(b) SCSEP participants who have been assessed through an SCSEP IEP have received an intensive service according to 20 CFR 663.240(a) of the WIA regulations. SCSEP participants who seek unsubsidized employment as part of their SCSEP IEP, may require training to meet their objectives. The SCSEP grantee/subgrantee, the host agency, the WIA program, or another One-Stop partner may provide training as appropriate and as negotiated in the MOU.

(c) The SCSEP provides opportunities for eligible individuals to engage in part-time community service activities for which they are compensated. These assignments are analogous to work experience activities or intensive service under 20 CFR 663.200 of the WIA regulations.

(d) SCSEP participants may be paid wages while receiving intensive or training services provided that the participant is functioning in a community service assignment.

Subpart C—The State Senior Employment Services Coordination Plan

§ 641.300 What is the State Plan?

The State Senior Employment Services Coordination Plan (the State Plan) is a plan, submitted by the Governor in each State, as an independent document or as part of the WIA Unified Plan, that describes the planning and implementation process for SCSEP services in the State, taking into account the relative distribution of eligible individuals and employment opportunities within the State. The State Plan is intended to foster coordination among the various SCSEP grantees operating within the State and to facilitate the efforts of stakeholders, including State and Local Boards under WIA, to work collaboratively through a participatory process to accomplish the SCSEP program's goals. (OAA sec. 503(a)(1)). The State Plan provisions are listed at proposed § 641.325.

§ 641.305 Who is responsible for developing and submitting the State Plan?

The Governor of each State is responsible for developing and submitting the State Plan to the Department.

§ 641.310 May the Governor delegate responsibility for developing and submitting the State Plan?

Yes, the Governor may delegate responsibility for developing and submitting the State Plan, provided that any such delegation is consistent with State law and regulations. To delegate responsibility, the Governor must submit to the Department a signed statement indicating the individual and/or organization that will be submitting the State Plan on his or her behalf.

§ 641.315 Who participates in developing the State Plan?

(a) In developing the State Plan the Governor must obtain the advice and recommendations of representatives from:

(1) The State and Area Agencies on Aging;

(2) State and Local Boards under the Workforce Investment Act (WIA);

(3) Public and private nonprofit agencies and organizations providing employment services, including each grantee operating an SCSEP project within the State, except as provided for in § 641.320(b);

(4) Social service organizations providing services to older individuals;

(5) Grantees under title III of the OAA;

(6) Affected communities;

(7) Underserved older individuals;

(8) Community-based organizations serving older individuals;

(9) Business organizations; and

(10) Labor organizations.

(b) The Governor may also obtain the advice and recommendations of other interested organizations and individuals, including SCSEP program participants, in developing the State Plan. (OAA sec. 503(a)(2)).

§ 641.320 Must all national grantees operating within a State participate in the State planning process?

(a) Yes, although section 503(a)(2) requires the Governor to obtain the advice and recommendations of SCSEP national grantees with no reciprocal provision requiring the national grantees to participate in the State planning process, the eligibility provision at section 514(c)(5) requires grantees to coordinate with other organizations at the State and local level. Therefore, any national grantee that does not participate in the State planning process may be deemed ineligible to receive SCSEP funds in the following Program Year.

(b) National grantees serving older American Indians are exempted from participating in the planning requirements under section 503(a)(8) of the OAA. These national grantees may

choose not to participate in the State planning process, however, the Department encourages participation. If a national grantee serving older American Indians does not participate in the State planning process, it must describe its plans for serving older American Indians in its application for SCSEP grant funds.

§ 641.325 What information must be provided in the State Plan?

The Department issues instructions detailing the information that must be provided in the State Plan. At a minimum, the State Plan must include information on the following:

(a) The ratio of eligible individuals in each service area to the total eligible population in the State;

(b) The relative distribution of:

(1) Eligible individuals residing in urban and rural areas within the State;

(2) Eligible individuals who have the greatest economic need;

(3) Eligible individuals who are minorities; and

(4) Eligible individuals who have the greatest social need;

(c) The employment situations and the types of skills possessed by eligible individuals;

(d) The localities and populations for which community service projects of the type authorized by title V are most needed;

(e) Actions taken or planned to coordinate activities of SCSEP grantees with the activities being carried out in the State under title I of WIA;

(f) A description of the State's procedures and time line for ensuring an open and inclusive planning process that provides meaningful opportunity for public comment;

(g) Public comments received, and a summary of the comments;

(h) A description of the steps taken to avoid disruptions to the greatest extent possible (see § 641.365); and

(i) Such other information as the Department may require in the State Plan instructions. (OAA sec. 503(a)(3)–(4), (6)).

§ 641.330 How should the State Plan reflect community service needs?

The Governor must ensure that the State Plan identifies the types of community services that are needed and the places where these services are most needed. The State Plan should specifically identify the needs and locations of those individuals most in need of community services and the groups working to meet their needs. (OAA sec. 503(a)(4)(E)).

§ 641.335 How should the Governor address the coordination of SCSEP services with activities funded under title I of WIA?

The Governor must seek the advice and recommendations from representatives of the State and Area Agencies on Aging in the State and the State and Local Boards established under title I of WIA. (OAA sec. 503(a)(2)). The State Plan must describe the steps that are being taken to coordinate SCSEP activities within the State with activities being carried out under title I of WIA. (OAA sec. 503(a)(4)(F)). The State Plan must describe the steps being taken to ensure that the SCSEP is an active partner in each One-Stop Delivery System and the steps that will be taken to encourage and improve coordination with the One-Stop Delivery System.

§ 641.340 Must the Governor submit a State Plan each year?

The Governor is not required to submit a full State Plan each year; however, at a minimum, the Governor must seek the advice and recommendations of the individuals and organizations identified in the statute at section 503(a)(2) about what, if any, changes are needed, and publish the changes to the State Plan for public comment each year and submit a modification to the Department.

§ 641.345 What are the requirements for modifying the State Plan?

(a) Modifications are required when:

(1) There are changes in Federal or State law or policy that substantially change the assumptions upon which the State Plan is based;

(2) There are changes in the State's vision, strategies, policies, performance indicators, or organizational responsibilities;

(3) The State has failed to meet performance goals and must submit a corrective action plan; or

(4) There is a change in a grantee or grantees.

(b) Modifications to the State Plan are subject to the same public review and comment requirements that apply to the development of the State Plan under §§ 641.325 and 641.350.

(c) The Department will issue additional instructions for the procedures that must be followed when requesting modifications to the State Plan. (OAA sec. 503(a)(1)).

§ 641.350 How should public comments be solicited and collected?

The Governor should follow established State procedures to solicit and collect public comments. The State Plan must include a description of the State's procedures and schedule for ensuring an open and inclusive planning process that provides meaningful opportunity for public comment.

§ 641.355 Who may comment on the State Plan?

Any individual or organization may comment on the Plan.

§ 641.360 How does the State Plan relate to the equitable distribution (ED) report?

The two documents address some of the same areas, and are prepared at different points in time. The ED report is prepared by State agencies at the beginning of each fiscal year and provides a ''snapshot'' of the actual distribution of all of the authorized positions within the State, grantee-by-grantee, and the optimum number of participant positions in each designated area based on the latest available Census data. It provides a basis for improving the distribution of SCSEP positions within the State. (See OAA sec. 508). The State Plan is prepared by the Governor and covers many areas in addition to equitable distribution, as discussed in § 641.325, and sets forth a proposed plan for distribution of authorized positions in the State. Any distribution or redistribution of positions made as a result of a State Plan proposal will be reflected in the subsequent year's ED report, which then forms the basis for the proposed distribution in the next year's State Plan. This process is iterative in that it moves the authorized positions from over-served areas to underserved areas over a period of time.

§ 641.365 How must the equitable distribution provisions be reconciled with the provision that disruptions to current participants should be avoided?

Governors must describe the steps that are being taken to comply with the statutory requirement to avoid disruptions in the State Plan. (OAA sec. 503(a)(6)). When there are new Census data indicating that there has been a shift in the location of the eligible population or when there is over-enrollment for any other reason, the Department recommends a gradual shift that encourages current participants in subsidized community service positions to move into unsubsidized employment to make positions available for eligible individuals in the areas where there has been an increase in the eligible population. The Department does not define disruptions to mean that participants are entitled to remain in a subsidized community service employment position indefinitely. As discussed in §§ 641.570 and 641.575, grantees may, under certain circumstances, place time limits on an SCSEP community service assignment, thus permitting positions to be transferred over time. Grantees shall not transfer positions from one geographic area to another without first notifying the State agency responsible for preparing the State Plan and equitable distribution report. Grantees must submit, in writing, any proposed changes in distribution that occur after submissions of the equitable distribution report to the Federal Project Officer for approval. All grantees are strongly encouraged to coordinate any proposed changes in position distribution with the other grantees servicing in the State, including the State project director, prior to submitting the proposed changes to their Federal Project Officer for approval.

Subpart D—Grant Application, Eligibility, and Award Requirements

§ 641.400 What entities are eligible to apply to the Department for funds to administer SCSEP community service projects?

(a) *National grants.* Entities eligible to apply for national grants include nonprofit organizations, Federal public agencies, and Tribal organizations. These entities must be capable of administering a multi-State program. State and local agencies may not apply for these funds.

(b) *National grants in a State.* Section 514(e)(3) of the OAA permits nonprofit organizations, public agencies, and States to receive SCSEP funds when a national grantee in a State fails to meet its performance measures in the second and third year of failure. The poor performing grantee that had its funds competed is not eligible to compete for the same funds.

(c) *State grants.* Section 506(e) of the OAA requires the Department to enter into agreements with each State to provide SCSEP services. States may use individual State agencies, political subdivisions of a State, a combination of such political subdivisions, or a national grantee operating in the State to administer SCSEP funds. If the State's funds are competed under section 514(f) of the OAA, other agencies within the State, political subdivisions of a State, a combination of political subdivisions of a State, and national grantees operating in the State are eligible to apply for funds. Other States may not apply for this funding.

§ 641.410 How does an eligible entity apply?

(a) *General.* An eligible entity must follow the application guidelines issued by the Department. The Department will issue application guidelines announcing the availability of State and national SCSEP funds whether they are awarded on a competitive or noncompetitive basis. The guidelines will contain application due dates, application instructions, and other necessary information. All entities must submit applications in accordance with the Department's instructions.

(b) *National grant applicants.* All applicants for SCSEP national grant funds, except organizations proposing to serve older American Indians, must submit their applications to the Governor of each State in which projects are proposed before submitting the application to the Department. (OAA sec. 503(a)(5)).

(c) *State applicants.* A State that submits a Unified Plan under WIA section 501 may include the State's SCSEP community service project grant application in its Unified Plan. Any State that submits an SCSEP grant application as part of its WIA Unified Plan must address all of the application requirements as published in the Department's instructions. State Plan applications and modifications are addressed in §§ 641.340 and 641.345.

§ 641.420 What factors will the Department consider in selecting grantees?

The Department will select grantees from among applicants that are able to meet the eligibility and responsibility review criteria at section 514 of the OAA. (Section 641.430 contains the eligibility criteria and §§ 641.440 and 641.450 contain the responsibility criteria.) If there is a full and open competition, the Department also will take the rating criteria described in the Solicitation for Grant Application or other instrument into consideration, including the applicant's/grantee's past performance in any prior Federal grants or contracts for the past 3 years.

§ 641.430 What are the eligibility criteria that each applicant must meet?

To be eligible to receive SCSEP funds, each applicant must be able to demonstrate:

(a) An ability to administer a program that serves the greatest number of eligible participants, giving particular consideration to individuals with greatest economic need, greatest social need, poor employment history or prospects, and over the age of 60;

(b) An ability to administer a program that provides employment for eligible individuals in communities in

which they reside, or in nearby communities, that will contribute to the general welfare of the community;

(c) An ability to administer a program that moves eligible participants into unsubsidized employment;

(d) An ability to move participants with multiple barriers to employment into unsubsidized employment;

(e) An ability to coordinate with other organizations at the State and local levels, including the One-Stop Delivery System;

(f) An ability to properly manage the program, including its plan for fiscal management of the SCSEP program;

(g) An ability to minimize program disruption for current participants if there is a change in project sponsor and/or location, and its plan for minimizing disruptions; and

(h) Any additional criteria that the Secretary of Labor deems appropriate in order to minimize disruptions for current participants.

§ 641.440 What are the responsibility conditions that an applicant must meet?

Each applicant must meet each of the listed responsibility ''tests'' by not having committed any of the acts of misfeasance or malfeasance described in § 641.440(a)–(n) of this section.

(a) The Department has been unable to recover a debt from the applicant, whether incurred by the applicant or by one of its subgrantees or subcontractors, or the applicant has failed to comply with a debt repayment plan to which it agreed. In this context, a debt is established by final agency action, followed by three demand letters to the applicant, without payment in full by the applicant.

(b) Established fraud or criminal activity of a significant nature within the applicant's organization.

(c) Serious administrative deficiencies identified by the Department, such as failure to maintain a financial management system as required by Federal regulations.

(d) Willful obstruction of the auditing or monitoring process.

(e) Failure to provide services to applicants as agreed to in a current or recent grant or to meet applicable performance measures.

(f) Failure to correct deficiencies brought to the grantee's attention in writing as a result of monitoring activities, reviews, assessments, or other activities.

(g) Failure to return a grant closeout package or outstanding advances within 90 days after the grant expiration date or receipt of closeout package, whichever is later, unless an extension has been requested and granted.

(h) Failure to submit required reports.

(i) Failure to properly report and dispose of Government property as instructed by the Department.

(j) Failure to have maintained effective cash management or cost controls resulting in excess cash on hand.

(k) Failure to ensure that a subgrantee complies with applicable audit requirements, including OMB Circular A–133 audit requirements specified at 20 CFR 667.200(b) and § 641.821.

(l) Failure to audit a subgrantee within the period required under § 641.821.

(m) Final disallowed costs in excess of five percent of the grant or contract award if, in the judgment of the Grant Officer, the disallowances are egregious findings.

(n) Failure to establish a mechanism to resolve a subgrantee's audit in a timely fashion.

§ 641.450 Are there responsibility conditions that alone will disqualify an applicant?

(a) Yes, an applicant may be disqualified if either of the first two responsibility tests listed in § 641.440 is not met.

(b) The remainder of the responsibility tests listed in § 641.440 require a substantial or persistent failure (for 2 or more consecutive years).

(c) The second responsibility test addresses ''fraud or criminal activity of a significant nature.'' The existence of significant fraud or criminal activity will be determined by the Department and typically will include willful or grossly negligent disregard for the use, handling, or other fiduciary duties of Federal funding where the grantee has no effective systems, checks, or safeguards to detect or prevent fraud or criminal activity. Additionally, significant fraud or criminal activity will

typically include coordinated patterns or behaviors that pervade a grantee's administration or are focused at the higher levels of a grantee's management or authority. To be consistent with the OAA section 514(d)(4)(B), this determination will be made on a case-by-case basis regardless of what party identifies the alleged fraud or criminal activity.

§ 641.460 How will the Department examine the responsibility of eligible entities?

The Department will conduct a review of available records to assess each applicant's overall fiscal and administrative ability to manage Federal funds. The Department's responsibility review may consider any available information, including the organization's history with regard to the management of other grants awarded by the Department or by other Federal agencies. (OAA sec. 514(d)(1) and (d)(2)).

§ 641.465 Under what circumstances may the Department reject an application?

(a) The Department may question any proposed project component of an application if it believes that the component will not serve the purposes of the SCSEP program. The Department may reject the application if the applicant does not submit or negotiate an acceptable alternative.

(b) The Department may reject any application that the Grant Officer determines unacceptable based on the content of the application, rating score, past performance, fiscal management, or any other factor the Grant Officer believes serves the best interest of the program, including the application's comparative rating in a competition.

§ 641.470 What happens if an applicant's application is rejected?

(a) Any entity whose application is rejected in whole or in part will be provided a timely notice as well as an explanation, or debriefing, of the Department's basis for its rejection. Notifications will include an explanation of the Department's decision and suggestions as to how to improve the applicant's position for future competitions.

(b) Incumbent grantees will not have an opportunity to cure in an open competition because that will create an inequity in favor of incumbents which already have opportunities to correct deficiencies through technical assistance, provided by the Department, under OAA sec. 514(e)(2)(A).

(c) If the Administrative Law Judge (ALJ) rules that the organization should have been selected, in whole or in part, and the organization continues to meet the requirements of this part, the matter must be remanded to the Grant Officer. The Grant Officer must, within 10 working days, determine whether the slots which are the subject of the ALJ's decision will be awarded, in whole or in part, to the organization and the timing of the award. In making this determination, the Grant Officer must take into account disruption to participants, disruption to grantees and the operational needs of the SCSEP. The Grant Officer must return the decision to the ALJ for review. In the event that the Grant Officer determines that it is not feasible, the successful appellant will be awarded its bid preparation costs or a pro rata share of those costs if Grant Officer's finding applies to only a portion of the funds that would be awarded to the successful appellant. An applicant so selected is not entitled to the full grant amount but will only receive the funds remaining in the grant that have not been expended by the current grantee through its operation of the grant and its subsequent closeout. The available remedy in an SCSEP non-selection appeal is the right to be selected in the future as an SCSEP grantee for the remainder of the current grant cycle. Neither retroactive nor immediately effective selection status may be awarded as relief in a non-selection appeal under this section and § 641.900.

Any organization selected and/or funded as an SCSEP grantee is subject to having its slots reduced or to being removed as an SCSEP grantee of an ALJ decision so orders. The Grant Officer provides instructions on transition and closeout to both the newly designated grantee and to the grantee whose slots are affected or which is being removed.

All parties must agree to the provisions of this paragraph as a condition of being an SCSEP grantee.

§ 641.480 May the Governor make recommendations to the Department on grant applications?

(a) Yes, each Governor will have a reasonable opportunity to make comments on any application to operate a SCSEP project located in the Governor's State before the Department makes a final decision on a grant award. The Governor's comments should be directed to the Department and may include the anticipated effect of the proposal on the overall distribution of program positions within the State; recommendations for redistribution of positions to underserved areas as vacancies occur in previously encumbered positions in other areas; and recommendations for distributing any new positions that may become available as a result of an increase in funding for the State. The Governor's recommendations should be consistent with the State Plan.

(b) Under noncompetitive conditions, the Governor may make the authorized recommendations on all applications. However, under competitive conditions, the Governor has the option of making the authorized recommendations on all applications or only on those applications proposed for award following the rating process. It is incumbent on each Governor to inform the Department of his or her intent to review the applications before or after the rating process.

§ 641.490 When may SCSEP grants be awarded competitively?

(a) The Department must hold a competition for SCSEP funds when a grantee (national grantee, national grantee in a State, or State grantee) fails to meet its performance measures; the eligibility requirements; or the responsibility tests established by section 514 of the OAA.

(b) The Department may hold a full and open competition before the beginning of a new grant period, or if additional grantees are funded. The details of the competition will be provided in a Solicitation for Grant Applications published in the FEDERAL REGISTER or in another medium. The Department believes that full and open competition is the best way to assure the highest quality of services to eligible participants.

[69 FR 19051, Apr. 9, 2004, as amended at 71 FR 35516, June 21, 2006]

Subpart E—Services to Participants

§ 641.500 Who is eligible to participate in the SCSEP?

(a) Anyone who is at least 55 years old and who is a member of a family with an income that is not more than 125 percent of the family income levels prepared by the Department of Health and Human Services and approved by the Office of Management and Budget (OMB) (poverty guidelines) is eligible to participate in the SCSEP. (OAA sec. 516(2)). A person with a disability may be treated as a ''family of one'' for income eligibility determination purposes. The Department will issue administrative guidance on the procedures for computing family income for purposes of determining SCSEP eligibility.

(b) States may enter into agreements between themselves to permit cross-border enrollment of eligible participants. Such agreements should cover both State and national grantee slots and must be submitted to the Department.

§ 641.505 When is eligibility determined?

Initial eligibility is determined at the time individuals apply to participate in the SCSEP. Once individuals become SCSEP participants, the grantee/subgrantee is responsible for verifying their continued income eligibility at least once every 12 months. Grantees may also verify an individual's eligibility as circumstances require.

§ 641.507 What types of income are included and excluded for participant eligibility determinations?

(a) The prior practice of excluding the first $500 of a participant's income for eligibility purposes is contrary to the section 516(2) of the OAA, which limits SCSEP eligibility to no more

than 125 percent of the poverty guidelines established by OMB. Therefore, this practice will no longer be permitted, either for current participants or new applicants.

(b) The Department will use the U.S. Census Bureau's Current Population Survey (CPS) as the standard for determining income eligibility for the SCSEP. The Department will issue administrative guidance regarding income definitions and income inclusion and exclusion standards for determining eligibility.

§ 641.510 What happens if a grantee/subgrantee determines that a participant is no longer eligible for the SCSEP due to an increase in family income?

If a grantee/subgrantee determines that a participant is no longer eligible for the SCSEP, the grantee/subgrantee must give the participant written notification of termination within 30 days, and the participant must be terminated 30 days after the participant receives the notice. The only exception is for participants found ineligible because of providing false information who must be terminated immediately with written notification of the reason therefore. Grantees/subgrantees must refer such individuals to the services provided under the One-Stop Delivery System or other appropriate partner program. Participants may file a grievance according to the grantee's procedures and subpart I.

§ 641.515 How must grantees/subgrantees recruit and select eligible individuals for participation in the SCSEP?

(a) Grantees and subgrantees must develop methods of recruitment and selection that assure that the maximum number of eligible individuals have an opportunity to participate in the program. To the extent feasible, grantees should seek to enroll individuals who are eligible minorities, limited English speakers, Indians, or who have the greatest economic need at least in proportion to their numbers in the area, taking into consideration their rates of poverty and unemployment. (OAA sec. 502(b)(1)(M)).

(b) Grantees and subgrantees must list all community service opportunities with the State Workforce Agency and all appropriate local offices and must use the One-Stop Delivery System in the recruitment and selection of eligible individuals. (OAA sec. 502(b)(1)(H)).

§ 641.520 Are there any priorities that grantees/subgrantees must use in selecting eligible individuals for participation in the SCSEP?

(a) Yes, in selecting eligible individuals for participation in the SCSEP, priority must be given to:

(1) Individuals who are at least 60 years old (OAA sec. 516(2)); and

(2) A veteran, or the spouse of a veteran who died of a service-connected disability, a member of the Armed Forces on active duty, who has been listed for a total of more than 90 days as missing in action, captured in the line of duty by a hostile force, or forcibly detained by a foreign government or power, the spouse of any veteran who has a total disability resulting from a service-connected disability, and the spouse of any veteran who died while a disability so evaluated was in existence, who meet program eligibility requirements under section 2 of the Jobs for Veterans Act, Public Law 107–288 (2002).

(b) Grantees must apply these priorities in the following order:

(1) Veterans and qualified spouses at least 60 years old;

(2) Other individuals at least 60 years old;

(3) Veterans and qualified spouses aged 55–59; and

(4) Other individuals aged 55–59.

§ 641.525 Are there any other groups of individuals who should be given special consideration when selecting SCSEP participants?

Yes, in selecting participants from among those individuals who are eligible, special consideration must be given, to the extent feasible, to individuals who have incomes below the poverty level, who have poor employment prospects and who have the greatest social and/or economic need and to individuals who are eligible minorities, limited English speakers, or Indians, as further defined in § 641.515. (OAA sec. 502(b)(1)(M)).

§ 641.530 Must the grantee/subgrantee always select priority or preference individuals?

Grantees must always select qualified individuals in accordance with § 641.520. Grantees must apply the preference, to the extent feasible, when selecting individuals within the priority groups, unless the grantee determines based on an assessment of their circumstances and the available community service employment opportunities, that a non-preference individual should receive services over a preference individual. When the Department examines the characteristics of a grantee's participant population, the grantee may be asked to provide evidence that it is adhering to the enrollment priorities and preferences set forth in §§ 641.515, 641.520, and 641.525.

§ 641.535 What services must grantees/subgrantees provide to participants?

(a) When individuals are selected for participation in the SCSEP, the grantee/subgrantee is responsible for:

(1) Providing orientation to the SCSEP, including information on project goals and objectives, community service assignments, training opportunities, available supportive services, the availability of a free physical examination, participant rights and responsibilities, and permitted and prohibited political activities (OAA sec. 502);

(2) Assessing participants' work history, skills and interests, talents, physical capabilities, aptitudes, needs for supportive services, occupational preferences, training needs, potential for performing community service assignments, and potential for transition to unsubsidized employment as necessary, but no less frequently that two times during a twelve month period;

(3) Using the information gathered during the assessment to develop IEPs for participants; except that if an assessment has already been performed and an IEP developed under title I of WIA, the WIA IEP will satisfy the requirement for an SCSEP assessment and IEP (see § 641.260) and updating the IEPs as necessary to reflect information gathered during the participant assessments (OAA sec. 502(b)(1)(N));

(4) Placing participants in appropriate community service activities in the community in which they reside, or in a nearby community (OAA sec. 502(b)(1)(B));

(5) Providing or arranging for necessary training specific to the participants' community service assignments (OAA sec. 502(b)(1)(I));

(6) Assisting participants in arranging for other training identified in their SCSEP IEPs (OAA sec. 502(b)(1)(N));

(7) Assisting participants in arranging for needed supportive services identified in their SCSEP IEPs (OAA sec. 502(b)(1)(N));

(8) Providing participants with wages and fringe benefits for time spent working in the assigned community service employment activity (OAA sec. 502(c)(6)(A)(i));

(9) Ensuring that participants have safe and healthy working conditions at their community service worksites (OAA sec. 502(b)(1)(J));

(10) Verifying participant income eligibility at least once every 12 months;

(11) Assisting participants in obtaining unsubsidized employment, including providing or arranging for employment counseling in support of their IEPs;

(12) Providing appropriate services for participants through the One-Stop Delivery System established under WIA (OAA sec. 502(b)(1)(O));

(13) Providing counseling on participants' progress in meeting the goals and objectives identified in their IEPs, and in meeting their supportive service needs (OAA sec. 502(b)(1)(N)(iii));

(14) Following-up with participants placed into unsubsidized employment during the first 6 months of placement to make certain that participants receive any follow-up services they may need to ensure successful placements; and

(15) Following-up at 6 months with participants who are placed in unsubsidized employment to determine whether they are still employed (OAA sec. 513(c)(2)(B));

(b) In addition to the services listed in paragraph (a) of this section, grantees and subgrantees must provide service to participants according to administrative guidelines that may be issued by the Department.

(c) Grantees may not use SCSEP funds for individuals who only need job search assistance or job referral services. Grantees may provide job search assistance and job club activities to participants who are enrolled in the SCESEP and are assigned to community service assignments.

§ 641.540 What types of training may grantees/subgrantees provide to SCSEP participants?

(a) Grantees and subgrantees must arrange skill training that is realistic and consistent with the participants' IEP, and that makes the most effective use of their skills and talents. This section does not apply to training provided as part of a community service assignment.

(b) Training may be provided before or after placement in a community service activity.

(c) Training may be in the form of lectures, seminars, classroom instruction, individual instruction, on-the-job experiences, or other arrangements, including but not limited to, arrangements with other workforce development programs such as WIA. (OAA sec. 502(c)(6)(A)(ii)).

(d) Grantees and subgrantees are encouraged to place a major emphasis on training available through on-the-job experience.

(e) Grantees/subgrantees are encouraged to obtain training through locally available resources, including host agencies, at no cost or reduced cost to the SCSEP.

(f) Grantees/subgrantees may pay reasonable costs for instructors, classroom rental, training supplies and materials, equipment, tuition, and other costs of training. Participants may be paid wages while in training. (OAA sec. 502(c)(6)(A)(ii)).

(g) Grantees/subgrantees may pay for costs associated with travel and room and board necessary to participate in training.

(h) Nothing in this section prevents or limits participants from engaging in self-development training available through other sources during hours when not assigned to community service activities.

§ 641.545 What supportive services may grantees/subgrantees provide to participants?

(a) Grantees/subgrantees may provide or arrange for supportive services to assist participants in successfully participating in SCSEP projects, including but not limited to payment of reasonable costs of transportation; health care and medical services; special job-related or personal counseling; incidentals such as work shoes, badges, uniforms, eyeglasses, and tools; child and adult care; temporary shelter; and follow-up services. (OAA sec. 502(c)(6)(A)(iv)).

(b) To the extent practicable, the grantee/subgrantee should provide for the payment of these expenses from other resources.

§ 641.550 What responsibility do grantees/subgrantees have to place participants in unsubsidized employment?

Because one goal of the program is to foster economic self-sufficiency, grantees and subgrantees should make reasonable efforts to place as many participants as possible into unsubsidized employment, in accordance with each participant's IEP. Grantees are responsible for working with participants to ensure that, for those participants whose IEPs include an unsubsidized employment goal, the participants are receiving services and taking actions designed to help them achieve this goal. Grantees and subgrantees must contact private and public employers directly or through the One-Stop Delivery System to develop or identify suitable unsubsidized employment opportunities. They must also encourage host agencies to assist participants in their transition to unsubsidized employment, including unsubsidized employment with the host agency.

§ 641.555 What responsibility do grantees have to participants who have been placed in unsubsidized employment?

(a) Grantees must contact placed participants during the first 6 months to

determine if participants have the necessary supportive services to remain in the job.

(b) Grantees must contact participants 6 months after placement to determine if they have been retained by the employer or use wage records to verify continued employment. (OAA sec. 513(c)(2)(B)).

(c) Grantees may have other follow-up requirements under subparts G and H.

§ 641.560 May grantees place participants directly into unsubsidized employment?

Grantees are encouraged to refer individuals who may be placed directly in an unsubsidized employment position to an employment provider, including the One-Stop for job placement assistance under WIA. The SCSEP encourages grantees to work closely with participants to develop an IEP and assessment to determine what training the individual may need. The Department encourages grantees to work with those participants who are the most difficult to place to provide them with the services necessary to develop the skills needed for job placement.

§ 641.565 What policies govern the provision of wages and fringe benefits to participants?

(a) *Wages*. Grantees must pay participants the highest applicable minimum wage for time spent in orientation, training required by the grantee/subgrantee, and work in community service assignments. The highest applicable minimum wage is either the minimum wage applicable under the Fair Labor Standards Act of 1938; the State or local minimum wage for the most nearly comparable covered employment; or the prevailing rate of pay for persons employed in similar public occupations by the same employer.

(b) *Fringe benefits*—(1) *Required fringe benefits*. Except as provided in paragraphs (b)(3) and (b)(4) of this section, grantees must ensure that participants receive all fringe benefits required by law.

(i) Grantees must provide fringe benefits uniformly to all participants within a project or subproject, unless the Department agrees to waive this provision due to a determination that such a waiver is in the best interests of applicants, participants, and project administration.

(ii) Grantees must offer participants the opportunity to receive physical examinations annually.

(A) Physical examinations are a fringe benefit, and not an eligibility criterion. The examining physician must provide, to participants only, a written report of the results of the examination. Participants may, at their option, provide the grantee or subgrantee with a copy of the report.

(B) Participants may choose not to accept the physical examination. In that case, the grantee or subgrantee must document this refusal, through a signed statement or other means, within 60 workdays after commencement of the community service assignment. Each year thereafter, grantees and subgrantees must offer the physical examination and document the offer and any participant's refusal.

(iii) When participants are not covered by the State workers' compensation law, the grantee or subgrantee must provide participants with workers' compensation benefits equal to those provided by law for covered employment.

(2) *Allowable fringe benefit costs*. Grantees may provide the following fringe benefits: annual leave; sick leave; holidays; health insurance; social security; and any other fringe benefits approved in the grant agreement and permitted by the appropriate Federal cost principles found in OMB Circulars A–87 and A–122, except for retirement costs. (See subpart H, §§ 641.847 and 641.850).

(3) *Retirement*. Grantees may not use grant funds to provide contributions into a retirement system or plan.

(4) *Unemployment compensation*. Unless required by law, grantees may not pay the cost of unemployment insurance for participants.

§ 641.570 Is there a time limit for participation in the program?

No, there is no time limit for participation in the SCSEP; however, a grantee may establish a maximum duration of enrollment in the grant agreement, when authorized by the Department. If

there is such a time limit on enrollment established in the grant agreement, the grantee must provide for a system to transition participants to unsubsidized employment or other assistance before the maximum enrollment duration has expired. Provisions for transition must be reflected in the participant's IEP.

§ 641.575 May a grantee establish a limit on the amount of time its participants may spend at each host agency?

Yes, grantees may establish limits on the amount of time that its participants may spend at a host agency. Such limits should be established in the grant agreement, as approved by the Department, and reflected in the participants' IEPs.

§ 641.580 Under what circumstances may a grantee terminate a participant?

(a) If, at any time, a grantee or subgrantee determines that a participant was incorrectly declared eligible as a result of false information given by that individual, the grantee or subgrantee must immediately terminate the participant and provide the participant with a written notice that explains the reason for termination.

(b) If, during annual income verification, a grantee finds a participant to be no longer eligible for enrollment because of changes in family income, the grantee may terminate the participant. In order to terminate the participant in such a case, the grantee must provide the participant with a written notice and terminate the participant 30 days after the participant receives the notice. (*See* § 641.505).

(c) If, at any time, the grantee or subgrantee determines that it incorrectly determined a participant to be eligible for the program through no fault of the participant, the grantee or subgrantee must give the participant immediate written notice explaining the reason(s) and must terminate the participant 30 days after the participant receives the notice.

(d) A grantee and subgrantee may terminate a participant for cause. In doing so, the grantee or subgrantee must inform the participant, in writing, of the reason(s) for termination. Grantees must discuss the proposed reasons for such terminations in the grant application, and must discuss such reasons with participants and provide each participant a written copy of its policies for terminating a participant for cause or otherwise at the time of enrollment.

(e) A grantee or subgrantee may terminate a participant if the participant refuses to accept a reasonable number of job offers or referrals to unsubsidized employment consistent with the SCSEP IEP and there are no extenuating circumstances that would hinder the participant from moving to unsubsidized employment.

(f) When a grantee or subgrantee makes an unfavorable determination of enrollment eligibility under paragraphs (a), (b), and (c) of this section, it must give the individual a reason for termination and, when feasible, should refer the individual to other potential sources of assistance, such as the One-Stop Delivery System.

(g) Any termination, as described in paragraphs (a) through (f) of this section, must be consistent with administrative guidelines issued by the Department, and the termination must be subject to the applicable grievance procedures described in § 641.910.

(h) Participants may not be terminated from the program solely on the basis of their age. Grantees and subgrantees may not impose an upper age limit for participation in the SCSEP.

§ 641.585 Are participants employees of the Federal Government?

(a) No, participants are not Federal employees. (OAA sec. 504(a)).

(b) If a Federal agency is a grantee or host agency, § 641.590 applies.

§ 641.590 Are participants employees of the grantee, the local project, and/or the host agency?

Grantees must determine if a participant is an employee of the grantee, local project, or host agency as the definition of an ''employee'' varies depending on the laws defining an employer/employee relationship.

Subpart F—Private Sector Training Projects Under Section 502(e) of the OAA

§ 641.600 What is the purpose of the private sector training projects authorized under section 502(e) of the OAA?

The purpose of the private sector training projects authorized under section 502(e) of the OAA is to allow States, public agencies, nonprofit organizations and private businesses to develop and operate projects designed to provide SCSEP participants with second career training and placement opportunities with private business concerns. In addition, the OAA provides section 502(e) grantees or contractors with opportunities to initiate or enhance their relationships with the private sector, fostering collaboration with the One-Stop Delivery System, improving their ability to meet and exceed performance standards, and broadening the range of options available to SCSEP participants.

§ 641.610 How are section 502(e) activities administered?

(a) The Department may enter into agreements with States, public agencies, private nonprofit organizations, and private businesses to carry out section 502(e) projects.

(b) To the extent possible, private sector training activities should emphasize different work modes, such as job sharing, flex-time, flex-place, arrangements relating to reduced physical exertion, and innovative work modes with a focus on second career training and placement in growth industries in jobs requiring new technological skills.

(c) Grantees must coordinate section 502(e) private sector training activities with programs carried out under title I of WIA and with SCSEP projects operating in the area whenever possible.

§ 641.620 How may an organization apply for section 502(e) funding?

Organizations applying for section 502(e) funding must follow the instructions issued by the Department which will be published in the FEDERAL REGISTER, or in another appropriate medium.

§ 641.630 What private sector training activities are allowable under section 502(e)?

Allowable activities authorized under section 502(e) include:

(a) Providing participants with services leading to transition to private sector employment, including:

(1) Training in new technological skills;

(2) On-the-job training with private-for-profit employers;

(3) Work experience with private-for-profit employers;

(4) Adult basic education;

(5) Classroom training;

(6) Occupational skills training;

(7) In combination with other services listed in paragraphs (a)(1) through (6) of this section or in conjunction with the local One-Stop Delivery System, job clubs or job search assistance;

(8) In combination with other services listed in paragraphs (a)(1) through (7) of this section, supportive services, which may include counseling, motivational training, and job development; or

(9) Combinations of the above-listed activities.

(b) Working with employers to develop jobs and innovative work modes including job sharing, flex-time, flex-place and other arrangements, including those relating to reduced physical exertion.

§ 641.640 How do the private sector training activities authorized under section 502(e) differ from other SCSEP activities?

(a) The private sector training activities authorized under section 502(e) are not required to have a community service project component. However, 502(e) participants must also be co-enrolled in a community service assignment in a SCSEP project.

(b) The private sector training activities authorized under section 502(e) focus solely on providing SCSEP-eligible individuals with second career training, placement opportunities, and other assistance necessary to obtain unsubsidized employment in the private sector.

(c) The Department is authorized to pay all of the costs of section 502(e) activities (*i.e.*, there is no non-Federal

share requirement). However section 502(e) grantees may choose to provide a non-Federal share and are encouraged to do so.

(d) The Department may enter directly into agreements with private businesses for section 502(e) activities.

(e) Grantees may fund private-for-profit and other organizations that do not have the IRS 501(c)(3) designation or are not public agencies to conduct section 502(e) activities if provided for in their grant or contract agreement with the Department.

§ 641.650 Does the requirement that not less than 75 percent of the funds be used to pay participant wages and fringe benefits apply to section 502(e) activities?

Yes, under section 502(c)(6)(B) of the OAA, 75 percent of SCSEP funds made available through a grant must be used to pay for the wages and fringe benefits of participants employed under SCSEP projects. This requirement applies to the total grant, and not necessarily to individual components of the grant. For entities that receive an SCSEP grant for both community service projects and section 502(e) projects, the requirement applies to the total grant. For entities that receive only a section 502(e) grant, the requirement applies to that grant.

§ 641.660 Who is eligible to participate in section 502(e) private sector training activities?

The same eligibility criteria used in the community service portion of the program apply for participation in the private sector training activities. (See subpart E, §§ 641.500, 641.510, 641.520, 641.525, and 641.530).

§ 641.665 When is eligibility determined?

Eligibility is determined at the time individuals apply to participate in the SCSEP. Grantees may also verify an individual's eligibility as circumstances require.

§ 641.670 May an eligible individual be enrolled simultaneously in section 502(e) private sector training activities operated by one grantee and a community service SCSEP project operated by a different SCSEP grantee?

Yes, an eligible individual must be enrolled simultaneously in section 502(e) private sector training activities and a community service SCSEP project, operated by two different SCSEP grantees. This is known as co-enrollment.

§ 641.680 How should grantees report on participants who are co-enrolled?

Referrals from a regular SCSEP grantee to a 502(e) only grantee that result in an unsubsidized placement may also be credited to the referring SCSEP grantee. However, if the SCSEP grantee is also a 502(e) grantee, the unsubsidized placement of the participant may only be counted once. The Department will issue administrative guidance on additional requirements.

§ 641.690 How is the performance of section 502(e) grantees measured?

(a) The following performance measures apply to section 502(e) grantees. The common performance measures that apply to this program are:

(1) Entered employment;

(2) Retention in employment; and

(3) Earnings.

(b) These measures are defined in and governed by subpart G of this part and the applicable provisions of administrative issuances implementing the SCSEP performance standards.

(c) If a section 502(e) grantee fails to meet its performance standards, the Department may require corrective action, may provide technical assistance, or may decline to fund the grantee in the next Program Year.

[69 FR 19051, Apr. 9, 2004, as amended at 71 FR 35517, June 21, 2006]

Subpart G—Performance Accountability

SOURCE: 72 FR 35846, June 29, 2007, unless otherwise noted.

§ 641.700 What performance measures/indicators apply to SCSEP grantees?

(a) *Indicators of performance.* There are currently eight performance measures, of which six are core indicators and two are additional indicators. Core indicators (defined in § 641.710) are subject to goal-setting and corrective action (described in § 641.720); that is, performance level goals for each core indicator must be agreed upon between the Department and each grantee before the start of each program year, and if a grantee fails to meet the performance level goals for the core indicators, that grantee is subject to corrective action. Additional indicators (defined in § 641.710) are not subject to goal-setting and are, therefore, also not subject to corrective action.

(b) *Core indicators.* Section 513(b)(1) as amended by Pub. L. 109–365 establishes the following core indicators of performance:

(1) Hours (in the aggregate) of community service employment;

(2) Entry into unsubsidized employment;

(3) Retention in unsubsidized employment for six months;

(4) Earnings;

(5) The number of eligible individuals served; and

(6) The number of most-in-need individuals served (the number of participating individuals described in subsection (a)(3)(B)(ii) or (b)(2) of section 518).

(c) *Additional indicators.* Section 513(b)(2) as amended by Pub. L. 109–365 establishes the following additional indicators of performance:

(1) Retention in unsubsidized employment for one year; and

(2) Satisfaction of the participants, employers, and their host agencies with their experiences and the services provided.

(3) Any other indicators of performance that the Secretary determines to be appropriate to evaluate services and performance.

(d) *Affected entities.* The core indicators of performance and additional indicators of performance are applicable to each grantee without regard to whether such grantee operates the program directly or through sub-contracts, sub-grants, or agreements with other entities. Grantees must assure that their sub-grantees and lower-tier sub-grantees are collecting and reporting program data.

(e) *Required evaluation and reporting.* An agreement to be evaluated on the core indicators of performance and to report information on the additional indicators of performance is a requirement for application for, and is a condition of, all SCSEP grants.

§ 641.710 How are the performance indicators defined?

(a) The core indicators are defined as follows:

(1) ''Hours of community service employment'' is defined as the total number of hours of community service provided by SCSEP participants divided by the number of hours of community service funded by the grantee's grant, after adjusting for differences in minimum wage among the States and areas. Paid training hours are excluded from this measure.

(2) ''Entry into unsubsidized employment'' is defined by the formula: Of those who are not employed at the date of participation: The number of participants who are employed in the first quarter after the exit quarter divided by the number of adult participants who exit during the quarter.

(3) ''Retention in unsubsidized employment for six months'' is defined by the formula: Of those who are employed in the first quarter after the exit quarter: The number of adult participants who are employed in both the second and third quarters after the exit quarter *divided* by the number of adult participants who exit during the quarter.

(4) ''Earnings'' is defined by the formula: Of those participants who are employed in the first, second and third quarters after the exit quarter: Total earnings in the second quarter plus total earnings in the third quarter after the exit quarter divided by the number of participants who exit during the quarter.

(5) ''The number of eligible individuals served'' is defined as the total number of participants served divided by a grantee's authorized number of

positions, after adjusting for differences in minimum wage among the States and areas.

(6) ''Most-in-need'' or ''the number of participating individuals described in subsection (a)(3)(B)(ii) or (b)(2) of section 518'' is defined by counting the total number of the following characteristics for all participants and dividing by the number of participants served. Participants are characterized as most-in-need if they:

(i) Have a severe disability;

(ii) Are frail;

(iii) Are age 75 or older;

(iv) Meet the eligibility requirements related to age for, but do not receive, benefits under Title II of the Social Security Act (42 U.S.C. 401 *et seq.*);

(v) Live in an area with persistent unemployment and are individuals with severely limited employment prospects;

(vi) Have limited English proficiency;

(vii) Have low literacy skills;

(viii) Have a disability;

(ix) Reside in a rural area;

(x) Are veterans;

(xi) Have low employment prospects;

(xii) Have failed to find employment after utilizing services provided under title I of the Workforce Investment Act of 1998 (29 U.S.C. 2801 *et seq.*); or

(xiii) Are homeless or at risk for homelessness.

(b) The additional indicators are defined as follows:

(1) ''Retention in unsubsidized employment for 1 year'' is defined by the formula: of those who are employed in the first quarter after the exit quarter: The number of participants who are employed in the fourth quarter after the exit quarter divided by the number of participants who exit during the quarter.

(2) ''Satisfaction of the participants, employers, and their host agencies with their experiences and the services provided'' is defined as the results of customer satisfaction surveys administered to each of these three customer groups. The Department will prescribe the content of the surveys.

§ 641.720 How will the Department and grantees initially determine and then adjust expected levels of performance for the core performance measures?

(a) *Initial agreement.* Before the beginning of each Program Year, the Department and each grantee will undertake to agree upon expected levels of performance for each core indicator, except as provided in paragraph (b) of § 641.730.

(1) As a first step in this process, the Department proposes a baseline performance level for each core indicator, taking into account any statutory performance requirements, the need to promote continuous improvement in the program overall and in each grantee, the grantee's past performance, and the statutory adjustment factors articulated in paragraph (b) of this section.

(2) A grantee may request a revision to the Department's initial performance level goal determination. The request must be based on data that supports the revision request. The data supplied by the grantee at this stage may concern the statutory adjustment factors articulated in paragraph (b) of this section, but is not limited to those factors; it is permissible for a grantee to supply data on ''other appropriate factors as determined by the Secretary.'' Section 513(a)(2)(C) as amended by Pub. L. 109–365.

(3) The Department may revise the performance level goal in response to the data provided. The Department then sets the expected levels of performance for the core indicators. Grantee may agree to the expected level of performance and thereby receive the grant. At this point, agreement is reached by the parties and funds may be awarded. If a grantee does not agree with the offered expected level of performance, agreement is not reached and no funds may be awarded. A grantee may submit comments to the Department regarding the grantee's satisfaction with the expected levels of performance.

(4) Funds may not be awarded under the grant until such agreement is reached.

(5) At the conclusion of negotiations concerning the performance levels with

all grantees, the Department will make available for public review the final negotiated expected levels of performance for each grantee, including any comments submitted by the grantee regarding the grantee's satisfaction with the negotiated levels.

(6) The minimum percentage for the expected level of performance for the entry into unsubsidized employment core indicator is:

(i) 21 percent for Program Year 2007;

(ii) 22 percent for Program Year 2008;

(iii) 23 percent for Program Year 2009;

(iv) 24 percent for Program Year 2010; and

(v) 25 percent for Program Year 2011.

(b) *Adjustment during the Program Year.* After the Department and grantees reach agreement on the core indicator levels, those levels may only be revised in response to a request from a grantee based on data supporting one or more of the following statutory adjustment factors:

(1) High rates of unemployment or of poverty or of participation in the program of block grants to States for temporary assistance for needy families established under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*), in the areas served by a grantee, relative to other areas of the State involved or Nation.

(2) Significant downturns in the areas served by the grantee or in the national economy.

(3) Significant numbers or proportions of participants with one or more barriers to employment, including individuals described in subsection (a)(3)(B)(ii) or (b)(2) of section 518 as amended by Pub. L. 109–365 (most-in-need), served by a grantee relative to such numbers or proportions for grantees serving other areas of the State or Nation.

(4) Changes in Federal, State, or local minimum wage requirements.

(5) Limited economies of scale for the provision of community service employment and other authorized activities in the areas served by the grantee.

§ 641.730 How will the Department assist grantees in the transition to the new core performance indicators?

(a) *General transition provision.* As soon as practicable after July 1, 2007, the Department will determine if an SCSEP grantee has, for Program Year 2006, met the expected levels of performance for the Program Year 2007. If the Department determines that the grantee failed to meet Program Year 2007 goals in Program Year 2006, the Department will provide technical assistance to help the grantee meet those expected levels of performance in Program Year 2007.

(b) *Exception for most-in-need for Program Year 2007.* Because the 2006 OAA Amendments expanded the list of most-in-need characteristics neither the Department nor the grantees have sufficient data to set a goal for measuring performance. Accordingly, Program Year 2007 will be treated as a baseline year for the most-in-need indicator so that the grantees and the Department may collect sufficient data to set a meaningful goal for this measure for Program Year 2008.

§ 641.740 How will the Department determine whether a grantee fails, meets, or exceeds the expected levels of performance for the core indicators and what will be the consequences of failing to meet expected levels of performance?

(a) *Aggregate calculation of performance.* Not later than 120 days after the end of each Program Year, the Department will determine if a national grantee has met the expected levels of performance (including any adjustments to such levels) by aggregating the grantee's core indicators. The aggregate is calculated by combining the percentage of goal achieved on each of the individual core indicators to obtain an average score. A grantee will fail to meet its performance measures when it is does not meet 80 percent of the agreed-upon level of performance for the aggregate of all the core indicators. Performance in the range of 80 to 100 percent constitutes meeting the level for the core performance measures. Performance in excess of 100 percent constitutes exceeding the level for the core performance measures.

(b) *Consequences*—(1) *National grantees.* (i) If the Department determines that a national grantee fails to meet the expected levels of performance in a Program Year, the Department, after each year of such failure, will provide

technical assistance and will require such grantee to submit a corrective action plan not later than 160 days after the end of the Program Year.

(ii) The corrective action plan must detail the steps the grantee will take to meet the expected levels of performance in the next Program Year.

(iii) Any national grantee that has failed to meet the expected levels of performance for 4 consecutive years (beginning with Program Year 2007) will not be allowed to compete in the subsequent grant competition, but may compete in the next grant competition after that subsequent competition.

(2) *State grantees.* (i) If the Department determines that a State fails to meet the expected levels of performance, the Department, after each year of such failure, will provide technical assistance and will require the State to submit a corrective action plan not later than 160 days after the end of the Program Year.

(ii) The corrective action plan must detail the steps the State will take to meet the expected levels of performance in the next Program Year.

(iii) If the Department determines that the State fails to meet the expected levels of performance for 3 consecutive Program Years (beginning with Program Year 2007), the Department will require the State to conduct a competition to award the funds allotted to the State under section 506(e) of the OAA for the first full Program Year following the Department's determination. The new grantee will be responsible for administering the SCSEP in the State and will be subject to the same requirements and responsibilities as had been the State grantee.

(c) *Evaluation.* The Department will annually evaluate, publish and make available for public review, information on the actual performance of each grantee with respect to the levels achieved for each of the core indicators of performance, compared to the expected levels of performance, and the actual performance of each grantee with respect to the levels achieved for each of the additional indicators of performance. The results of the Department's annual evaluation will be reported to Congress.

§ 641.750 Will there be performance-related incentives?

The Department is authorized by sections 502(e)(2)(B)(iv) and 517(c)(1) as amended by Pub. L. 109–365 to use recaptured SCSEP funds to provide incentive awards. The Department will exercise this authority at its discretion.

Subpart H—Administrative Requirements

§ 641.800 What uniform administrative requirements apply to the use of SCSEP funds?

(a) SCSEP recipients and subrecipients must follow the uniform administrative requirements and allowable cost requirements that apply to their type of organization. (OAA sec. 503(f)(2)).

(b) Governments, State, local, and Indian Tribal Organizations that receive SCSEP funds under grants or cooperative agreements must follow the common rule implementing OMB Circular A–102, ''Grants and Cooperative Agreements with State and Local Governments'' (10/07/1994) (further amended 08/29/1977), codified at 29 CFR part 97.

(c) Nonprofit and commercial organizations, institutions of higher education, hospitals, other nonprofit organizations, and commercial organizations that receive SCSEP funds under grants or cooperative agreements must follow the common rule implementing OMB Circular A–110, codified at 2 CFR part 215 and 29 CFR part 95.

[69 FR 19051, Apr. 9, 2004, as amended at 71 FR 35517, June 21, 2006]

§ 641.803 What is program income?

Program income, as described in 29 CFR 97.25 (governments) and 29 CFR 95.2(bb) (nonprofit and commercial organizations), is income earned by the recipient or subrecipient during the grant period that is directly generated by an allowable activity supported by grant funds or earned as a result of the award of grant funds. Program income includes income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. (*See* 29 CFR 95.24(e)

and 29 CFR 97.25(e)). Costs of generating SCSEP program income may be deducted from gross income received by SCSEP recipients and subrecipients to determine SCSEP program income earned or generated provided these costs have not been charged to the SCSEP program.

§ 641.806 How must SCSEP program income be used?

(a) SCSEP recipients that earn or generate program income during the grant period must add the program income to the Federal and non-Federal funds committed to the SCSEP program and use it for the program, as provided in 29 CFR 95.24(a) or 29 CFR 97.25(g)(2), as applicable.

(b) Recipients that continue to receive an SCSEP grant from the Department must spend program income earned or generated from SCSEP funded activities after the end of the grant period for SCSEP purposes in the Program Year it was received.

(c) Recipients that do not continue to receive an SCSEP grant from the Department must remit unexpended program income earned or generated during the grant period from SCSEP funded activities to the Department after the end of the grant period.

§ 641.809 What non-Federal share (matching) requirements apply to the use of SCSEP funds?

(a) The Department will pay no more than 90 percent of the total cost of activities carried out under a SCSEP grant. (OAA sec. 502(c)(1)).

(b) All SCSEP recipients, including Federal agencies if there is no statutory exemption, must provide or ensure that at least 10 percent of the total cost of activities carried out under an SCSEP grant (non-Federal share of costs) consists of non-Federal funds, except as provided in paragraphs (e) and (f) of this section.

(c) Recipients must determine the non-Federal share of costs in accordance with 29 CFR 97.24 for governmental units, or 29 CFR 95.23 for nonprofit and commercial organizations.

(d) The non-Federal share of costs may be provided in cash, or in-kind, or a combination of the two. (OAA sec. 502(c)(2)).

(e) A recipient may not require a subgrantee or host agency to provide non-Federal resources for the use of the SCSEP project as a condition of entering into a subrecipient or host relationship.

(f) The Department may pay all of the costs of activities carried out under section 502(e) of the OAA. (OAA sec. 502(e)).

(g) The Department may pay all of the costs of activities in an emergency or disaster project or a project in an economically distressed area. (OAA sec. 502(c)(1)).

§ 641.812 What is the period of availability of SCSEP funds?

(a) Except as provided in § 641.815, recipients must expend SCSEP funds during the Program Year for which they are awarded (July 1–June 30). (OAA sec. 515(b)).

(b) SCSEP recipients must ensure that no sub-agreement provides for the expenditure of any SCSEP funds before July 1, or after the end of the grant period, except as provided in § 641.815.

§ 641.815 May the period of availability be extended?

SCSEP recipients may request in writing, and the Department may grant, an extension of the period during which SCSEP funds may be obligated or expended. SCSEP recipients requesting an extension must justify that an extension is necessary. (OAA sec. 515(b)). The Department will notify recipients in writing of the approval or disapproval of any such requests.

§ 641.818 What happens to funds that are unexpended at the end of the Program Year?

(a) The Department may recapture any unexpended funds at the end of any Program Year and use the recaptured funds during the two succeeding Program Years for:

(1) Incentive grants;

(2) Technical assistance; or

(3) Grant and contract awards for any other SCSEP programs and activities. (OAA sec. 515(c)).

(b) The Department will provide the necessary information through an administrative issuance.

§ 641.821 What audit requirements apply to the use of SCSEP funds?

(a) Recipients and subrecipients receiving Federal awards of SCSEP funds must follow the audit requirements in paragraphs (b) and (c) of this section that apply to their type of organization. As used here, Federal awards of SCSEP funds include Federal financial assistance and Federal cost-reimbursement contracts received directly from the Department or indirectly under awards by SCSEP recipients or higher-tier subrecipients. (OAA sec. 503(f)(2)).

(b) All governmental and nonprofit organizations that are recipients or subrecipients must follow the audit requirements of OMB Circular A–133. These requirements are codified at 29 CFR parts 96 and 99 and referenced in 29 CFR 97.26 for governmental organizations; and in 29 CFR 95.26 for institutions of higher education, hospitals, and other nonprofit organizations.

(c) (1) The Department is responsible for audits of SCSEP recipients that are commercial organizations.

(2) Commercial organizations that are subrecipients under the SCSEP program and that expend more than the minimum level specified in OMB Circular A–133 ($500,000, for fiscal years ending after December 31, 2003) must have either an organization-wide audit conducted in accordance with OMB Circular A–133 or a program-specific financial and compliance audit.

§ 641.824 What lobbying requirements apply to the use of SCSEP funds?

SCSEP recipients and subrecipients must comply with the restrictions on lobbying codified in the Department's regulations at 29 CFR part 93. (Also refer to § 641.850(c), ''Lobbying costs.'')

§ 641.827 What general nondiscrimination requirements apply to the use of SCSEP funds?

(a) SCSEP recipients, subrecipients, and host agencies are required to comply with the nondiscrimination provisions codified in the Department's regulations at 29 CFR parts 31 and 32.

(b) Recipients and subrecipients of SCSEP funds are required to comply with the nondiscrimination provisions codified in the Department's regulations at 29 CFR part 37 if:

(1) The recipient:

(i) is a One-Stop partner listed in section 121(b) of WIA, and

(ii) operates programs and activities that are part of the One-Stop Delivery System established under the Workforce Investment Act; or

(2) The recipient otherwise satisfies the definition of ''recipient'' in 29 CFR 37.4.

(c) Recipients must ensure that participants are provided informational materials relating to age discrimination and/or their rights under the Age Discrimination in Employment Act of 1975 that are distributed to recipients by the Department pursuant to section 503(b)(3) of the OAA.

(d) Questions about, or complaints alleging a violation of the nondiscrimination requirements cited in this section may be directed or mailed to the Director, Civil Rights Center, U.S. Department of Labor, Room N–4123, 200 Constitution Avenue, NW., Washington, DC 20210, for processing. (See § 641.910(d)).

(e) The specification of any right or protection against discrimination in paragraphs (a) through (d) of this section must not be interpreted to exclude or diminish any other right or protection against discrimination in connection with an SCSEP program that may be available to any participant, applicant for participation, or other individual under any applicable Federal, State, or local laws prohibiting discrimination, or their implementing regulations.

§ 641.833 What policies govern political patronage?

(a) A recipient or subrecipient must not select, reject, promote, or terminate an individual based on political services provided by the individual or on the individual's political affiliations or beliefs. In addition, as indicated in § 641.827(b), certain recipients and subrecipients of SCSEP funds are required to comply with the Workforce Investment Act nondiscrimination regulations in 29 CFR part 37. These regulations prohibit discrimination on the basis of political affiliation or belief.

(b) A recipient or subrecipient must not provide funds to any subrecipient,

host agency or other entity based on political affiliation.

(c) SCSEP recipients must ensure that every entity that receives SCSEP funds through the recipient is applying the policies stated in paragraphs (a) and (b) of this section.

§ 641.836 What policies govern political activities?

(a) No project under title V of the OAA may involve political activities. SCSEP recipients must ensure compliance with the requirements and prohibitions involving political activities described in paragraphs (b) and (c) of this section.

(b) State and local employees involved in the administration of SCSEP activities may not engage in political activities prohibited under the Hatch Act (5 U.S.C. chapter 15), including:

(1) Seeking partisan elective office;

(2) Using official authority or influence for the purpose of affecting elections, nominations for office, or fundraising for political purposes. (5 U.S.C. 1502).

(c) SCSEP recipients must provide all persons associated with SCSEP activities with a written explanation of allowable and unallowable political activities under the Hatch Act. A notice explaining these allowable and unallowable political activities must be posted in every workplace in which SCSEP activities are conducted. The Department will provide the form and content of the notice and explanatory material by administrative issuance. (OAA sec. 502(b)(1)(P).

(d) SCSEP recipients must ensure that:

(1) No SCSEP participants or staff persons engage in partisan or nonpartisan political activities during hours for which they are being paid with SCSEP funds.

(2) No participants or staff persons engage in partisan political activities in which such participants or staff persons represent themselves as spokespersons for the SCSEP program.

(3) No participants are employed or out-stationed in the offices of a Member of Congress, a State or local legislator, or on the staff of any legislative committee.

(4) No participants are employed or out-stationed in the immediate offices of any elected chief executive officer of a State or unit of general government, except that:

(i) Units of local government may serve as host agencies for participants, provided that their assignments are non-political; and

(ii) While assignments may technically place participants in such offices, such assignments actually must be concerned with program and service activities and not in any way involved in political functions.

(5) No participants are assigned to perform political activities in the offices of other elected officials. Placement of participants in such offices in non-political assignments is permissible, however, provided that:

(i) SCSEP recipients develop safeguards to ensure that participants placed in these assignments are not involved in political activities; and

(ii) These safeguards are described in the grant agreement and are subject to review and monitoring by the SCSEP recipient and by the Department.

§ 641.839 What policies govern union organizing activities?

Recipients must ensure that SCSEP funds are not used in any way to assist, promote, or deter union organizing.

§ 641.841 What policies govern nepotism?

(a) SCSEP recipients must ensure that no recipient or subrecipient hires, and no host agency serves as a worksite for, a person who works in an SCSEP community service position if a member of that person's immediate family is engaged in a decision-making capacity (whether compensated or not) for that project, subproject, recipient, subrecipient, or host agency. The Department may exempt this requirement from worksites on Native American reservations and in rural areas provided that adequate justification can be documented, such as that no other persons are eligible and available for participation in the program.

(b) To the extent that an applicable State or local legal requirement regarding nepotism is more restrictive than this provision, SCSEP recipients

must ensure that the more restrictive requirement is followed.

(c) For purposes of this section, ''Immediate family'' means wife, husband, son, daughter, mother, father, brother, sister, son-in-law, daughter-in-law, mother-in-law, father-in-law, brother-in-law, sister-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild.

§ 641.844 What maintenance of effort requirements apply to the use of SCSEP funds?

(a) Employment of a participant funded under title V of the OAA is permissible only in addition to employment that would otherwise be funded by the recipient, subrecipient, and host agency without assistance under the OAA. (OAA sec. 502(b)(1)(F)).

(b) Each project funded under title V:

(1) Must result in an increase in employment opportunities in addition to those that would otherwise be available;

(2) Must not result in the displacement of currently employed workers, including partial displacement such as a reduction in hours of non-overtime work, wages, or employment benefits;

(3) Must not impair existing contracts for service or result in the substitution of Federal funds for other funds in connection with work that would otherwise be performed;

(4) Must not substitute SCSEP-funded positions for existing Federally assisted jobs; and

(5) Must not employ or continue to employ any participant to perform work that is the same or substantially the same as that performed by any other person who is on layoff. (OAA sec. 502(b)(1)(G)).

§ 641.847 What uniform allowable cost requirements apply to the use of SCSEP funds?

(a) *General.* Unless specified otherwise in this part or the grant agreement, recipients and subrecipients must follow the uniform allowable cost requirements that apply to their type of organization. For example, a local government subrecipient receiving SCSEP funds from a nonprofit organization must use the allowable cost requirements for governmental organizations in OMB Circular A–87. The Department's regulations at 29 CFR 95.27 and 29 CFR 97.22 identify the Federal principles for determining allowable costs that each kind of organization must follow. The applicable Federal principles for each kind of organization are described in paragraphs (b)(1) through (b)(5) of this section. (OAA sec. 503(f)(2)).

(b) *Allowable costs/cost principles.* (1) Allowable costs for State, local, and Indian Tribal government organizations must be determined under OMB Circular A–87, ''Cost Principles for State, Local and Indian Tribal Governments.''

(2) Allowable costs for nonprofit organizations must be determined under OMB Circular A–122, ''Cost Principles for Non-Profit Organizations.''

(3) Allowable costs for institutions of higher education must be determined under OMB Circular A–21, ''Cost Principles for Educational Institutions.''

(4) Allowable costs for hospitals must be determined in accordance with appendix E of 45 CFR part 74, ''Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals.''

(5) Allowable costs for commercial organizations and those nonprofit organizations listed in Attachment C to OMB Circular A–122 must be determined under the provisions of the Federal Acquisition Regulation (FAR), at 48 CFR part 31.

§ 641.850 Are there other specific allowable and unallowable cost requirements for the SCSEP?

(a) Yes, in addition to the generally applicable cost principles in § 641.847(b), the cost principles in paragraphs (b) through (g) of this section apply to SCSEP grants.

(b) *Claims against the Government.* For all types of entities, legal expenses for the prosecution of claims against the Federal Government, including appeals to an Administrative Law Judge, are unallowable.

(c) *Lobbying costs.* In addition to the prohibition contained in 29 CFR part 93, SCSEP funds must not be used to pay any salaries or expenses related to

any activity designed to influence legislation or appropriations pending before the Congress of the United States or any State legislature. (See § 641.824).

(d) *One-Stop Costs.* Costs of participating as a required partner in the One-Stop delivery system established in accordance with section 134(c) of the Workforce Investment Act of 1998 are allowable, provided that SCSEP services and funding are provided in accordance with the Memorandum of Understanding required by the Workforce Investment Act and section 502(b)(1)(O) of the Older Americans Act, and costs are determined in accordance with the applicable cost principles.

(e) *Building repairs and acquisition costs.* Except as provided in paragraph (e) of this section and as an exception to the allowable cost principles in § 641.847(b), no SCSEP funds may be used for the purchase, construction, or renovation of any building except for the labor involved in:

(1) Minor remodeling of a public building necessary to make it suitable for use for project purposes;

(2) Minor repair and rehabilitation of publicly used facilities for the general benefit of the community; and

(3) Minor repair and rehabilitation by participants of housing occupied by persons with low incomes who are declared eligible for such services by authorized local agencies.

(f) *Accessibility and reasonable accommodation.* Recipients and subrecipients may use SCSEP funds to meet their obligations under section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990 and any other applicable Federal disability nondiscrimination laws to provide physical and programmatic accessibility and reasonable accommodation/modifications for, and effective communications with, individuals with disabilities. (29 U.S.C. 794).

(g) *Participants' fringe benefit costs.* Recipients and subrecipients may use SCSEP funds for participant fringe benefit costs only under the conditions set forth in § 641.565.

§ 641.853 How are costs classified?

(a) All costs must be classified as ''administrative costs'' or ''program costs.'' (OAA sec. 502(c)(6)).

(b) Recipients and subrecipients must assign participants' wage and fringe benefit costs and other participant (enrollee) costs such as supportive services to the Program Cost cost category. (See § 641.864). When participants' community service assignments involve functions whose costs are normally classified as Administrative Cost, compensation provided to the participants shall be charged as program costs instead of administrative costs, since participant wage and fringe benefit costs are always charged to the Program Cost category.

§ 641.856 What functions and activities constitute costs of administration?

(a) The costs of administration are that allocable portion of necessary and reasonable allowable costs of recipients and first-tier subrecipients (as defined in paragraph (c) of this section) that are associated with those specific functions identified in paragraph (b) of this section and that are not related to the direct provision of programmatic services specified in § 641.864. These costs may be both personnel and non-personnel and both direct and indirect costs.

(b) The costs of administration are the costs associated with:

(1) Performing overall general administrative and coordination functions, including:

(i) Accounting, budgeting, financial, and cash management functions;

(ii) Procurement and purchasing functions;

(iii) Property management functions;

(iv) Personnel management functions;

(v) Payroll functions;

(vi) Coordinating the resolution of findings arising from audits, reviews, investigations, and incident reports;

(vii) Audit functions;

(viii) General legal services functions; and

(ix) Developing systems and procedures, including information systems, required for these administrative functions;

(2) Oversight and monitoring responsibilities related to administrative functions;

(3) Costs of goods and services used for administrative functions of the program, including goods and services such as rental or purchase of equipment, utilities, office supplies, postage, and rental and maintenance of office space;

(4) Travel costs incurred for official business in carrying out administrative activities or the overall management of the program; and

(5) Costs of information systems related to administrative functions (for example, personnel, procurement, purchasing, property management, accounting, and payroll systems) including the purchase, systems development, and operating costs of such systems. (OAA sec. 502(c)(4)).

(c) First-tier subrecipients are those subrecipients that receive SCSEP funds directly from an SCSEP recipient and perform the following activities for all participants:

(1) Eligibility determination;

(2) Participant assessment;

(3) Development of and placement into community service opportunities.

§ 641.859 What other special rules govern the classification of costs as administrative costs or program costs?

(a) Recipients and subrecipients must comply with the special rules for classifying costs as administrative costs or program costs set forth in paragraphs (b) through (e) of this section.

(b)(1) Costs of awards by recipients and first-tier subrecipients that are solely for the performance of their own administrative functions are classified as administrative costs.

(2) Costs incurred by recipients and first tier subrecipients for administrative functions listed in § 641.856(b) are classified as administrative costs.

(3) Costs incurred by vendors performing administrative functions for recipients and first tier subrecipients are classified as administrative costs.

(4) Except as provided in paragraph (b)(1), all costs incurred by subrecipients other than first-tier subrecipients are classified as program costs.

(5) Except as provided in paragraph (b)(3) of this section (*i.e.*, costs that are incurred to perform administrative functions for recipients and first tier subrecipients), all costs incurred by vendors are program costs. (See 29 CFR 99.210 for a discussion of factors differentiating subrecipients from vendors.)

(c) Personnel and related non-personnel costs of staff who perform both administrative functions specified in § 641.856(b) and programmatic services or activities must be allocated as administrative or program costs to the benefiting cost objectives/categories based on documented distributions of actual time worked or other equitable cost allocation methods.

(d) Specific costs charged to an overhead or indirect cost pool that can be identified directly as a program cost must be charged as a program cost. Documentation of such charges must be maintained.

(e) Costs of the following information systems including the purchase, systems development and operating (e.g., data entry) costs are charged to the ''program cost'' category:

(1) Tracking or monitoring of participant and performance information;

(2) Employment statistics information, including job listing information, job skills information, and demand occupation information; and

(3) Local area performance information.

§ 641.861 Must SCSEP recipients provide funding for the administrative costs of subrecipients?

(a) Recipients and subrecipients must obtain funding for administrative costs to the extent practicable from non-Federal sources. (OAA sec. 502(c)(5)).

(b) SCSEP recipients must ensure that sufficient funding is provided for the administrative activities of subrecipients that receive SCSEP funding through the recipient. Each SCSEP recipient must describe in its grant application the methodology used to ensure that subrecipients receive sufficient funding for their administrative activities. (OAA sec. 502(b)(1)(R)).

§ 641.864 What functions and activities constitute program costs?

Program costs include, but are not limited to, the costs of the following functions:

(a) Participant Wages and Fringe Benefits, consisting of wages paid and fringe benefits provided to participants for hours of community service assignments, as described in § 641.565;

(b) Outreach, recruitment and selection, intake, orientation, assessment, and preparation and updating of IEPs;

(c) Participant training provided on the job, in a classroom setting, or utilizing other appropriate arrangements, consisting of reasonable costs of instructors' salaries, classroom space, training supplies, materials, equipment, and tuition;

(d) Subject to the restrictions in § 641.535(c), job placement assistance, including job development and job search assistance, job fairs, job clubs, and job referrals; and

(e) Participant supportive services, as described in § 641.545. (OAA sec. 502(c)(6)(A)).

§ 641.867 What are the limitations on the amount of SCSEP administrative costs?

(a) Except as provided in paragraph (b), no more than 13.5 percent of the SCSEP funds received for a Program Year may be used for administrative costs.

(b) The Department may increase the amount available for administrative costs to not more than 15 percent, in accordance with § 641.870. (OAA sec. 502(c)(3)).

§ 641.870 Under what circumstances may the administrative cost limitation be increased?

(a) SCSEP recipients may request that the Department increase the amount available for administrative costs. The Department may honor the request if:

(1) The Department determines that it is necessary to carry out the project; and

(2) The recipient demonstrates that:

(i) Major administrative cost increases are being incurred in necessary program components, including liability insurance, payments for workers' compensation, costs associated with achieving unsubsidized placement goals, and other operation requirements imposed by the Department;

(ii) The number of employment positions in the project or the number of minority eligible individuals participating in the project will decline if the amount available for paying the cost of administration is not increased; or

(iii) The size of the project is so small that the amount of administrative expenses incurred to carry out the project necessarily exceeds 13.5 percent of the amount for such project. (OAA sec. 502(c)(3)).

(b) A request by a recipient or prospective recipient for an increase in the amount available for administrative costs may be submitted as part of the grant application or as a separate submission at any time after the grant award.

§ 641.873 What minimum expenditure levels are required for participant wages and fringe benefits?

(a) Not less than 75 percent of the SCSEP funds provided under a grant from the Department must be used to pay for the wages and fringe benefits of participants in such projects, including awards made under section 502(e) of the OAA. (OAA sec. 502(c)(6)(B)).

(b) An SCSEP recipient is in compliance with this provision if at least 75 percent of the total expenditures of SCSEP funds provided to the recipient were for wages and benefits, even if one or more subrecipients did not expend at least 75 percent of their SCSEP funds for wages and fringe benefits for community service projects.

(c) Recipients receiving both general SCSEP funds and section 502(e) funds must meet the 75 percent requirement based on the total of both grants.

§ 641.876 When will compliance with cost limitations and minimum expenditure levels be determined?

The Department will determine compliance by examining expenditures of SCSEP funds. The cost limitations and minimum expenditure level requirements must be met at the time all such funds have been expended or the period of availability of such funds has expired, whichever comes first.

§ 641.879 What are the fiscal and performance reporting requirements for recipients?

(a) In accordance with 29 CFR 97.40 or 29 CFR 95.51, as appropriate, each SCSEP recipient must submit an

SCSEP Quarterly Progress Report (QPR) to the Department in electronic format via the Internet within 30 days after the end of each quarter of the Program Year (PY). The SCSEP recipient must prepare this report to coincide with the ending dates for Federal PY quarters. Each SCSEP recipient must also submit a final QPR to the Department within 90 days after the end of the grant period. If the grant period ends on a date other than the last day of a Federal Program Year quarter, the SCSEP recipient must submit the final QPR covering the entire grant period no later than 90 days after the ending date of the grant. The Department will provide instructions for the preparation of this report. (OAA sec. 503(f)(3)).

(b) In accordance with 29 CFR 97.41 or 29 CFR 95.52, each SCSEP recipient must submit an SCSEP Financial Status Report (FSR) in electronic format to the Department via the Internet within 30 days after the ending of each quarter of the Program Year. Each SCSEP recipient must also submit a final FSR to the Department via the Internet within 90 days after the end of the grant period. If the grant period ends on a date other than the last day of a Federal PY quarter, the SCSEP recipient must submit the final FSR covering the entire grant period no later than 90 days after the ending date of the grant. The Department will provide instructions for the preparation of this report. (OAA sec. 503(f)(3)).

(1) Financial data are required to be reported on an accrual basis, and cumulatively by funding year of appropriation. Financial data may also be required on specific program activities.

(2) If the SCSEP recipient's accounting records are not normally kept on the accrual basis of accounting, the SCSEP recipient must develop accrual information through an analysis of the documentation on hand.

(c) Each State agency receiving title V funds must annually submit an equitable distribution report of SCSEP positions by all recipients in the State. The Department will provide instructions for the preparation of this report. (OAA sec. 508).

(d) Each SCSEP recipient that receives section 502(e) funds must submit reports on its section 502(e) activities. The Department will provide instructions for the preparation of these reports. (OAA sec. 503(f)(3)).

(e) Each SCSEP recipient must collect data and submit reports regarding the program performance measures and the common performance measures. *See* §§641.700–641.720. The Department will provide instructions detailing these measures and how recipients must prepare this report.

(f) Each SCSEP recipient may be required to collect data and submit reports about the demographic characteristics of program participants. The Department will provide instructions detailing these measures and how recipients must prepare this report.

(g) Federal agencies that receive and use SCSEP funds under interagency agreements must submit project fiscal and progress reports in accordance with this section. Federal recipients must maintain the necessary records that support required reports according to instructions provided by the Department. (OAA sec. 503(f)(3)).

(h) Recipients may be required to maintain records that contain any other information that the Department determines to be appropriate in support of any other reports that the Department may require. (OAA sec. 503(f)(3)).

(i) Grantees submitting reports that cannot be validated or verified as accurately counting and reporting activities in accordance with the reporting instructions may be treated as failing to submit reports, which may result in failing one of the responsibility tests outlined in §641.440 and section 514(d) of the OAA.

§641.881 What are the SCSEP recipient's responsibilities relating to awards to subrecipients?

(a) The SCSEP recipient is responsible for all grant activities, including the performance of SCSEP activities by subrecipients, and ensuring that subrecipients comply with the OAA and this part. (See also OAA sec. 514 on responsibility tests).

(b) Recipients must follow their own procedures for allocating funds to other entities. The Department will

not grant funds to another entity on the recipient's behalf.

§ 641.884 What are the grant closeout procedures?

SCSEP recipients must follow the grant closeout procedures at 29 CFR 97.50 or 29 CFR 95.71, as appropriate. The Department will issue supplementary closeout instructions to title V recipients as necessary.

Subpart I—Grievance Procedures and Appeals Process

§ 641.900 What appeal process is available to an applicant that does not receive a grant?

(a) An applicant for financial assistance under title V of the OAA that is dissatisfied because the Department has issued a determination not to award financial assistance, in whole or in part, to such applicant, may request that the Grant Officer provide the reasons for not awarding financial assistance to that applicant (debriefing). The request must be filed within 10 days of the date of notification indicating that it would not be awarded. The Grant Officer must provide the protesting applicant with a debriefing and with a written decision stating the reasons for the decision not to award the grant within 20 days of the protest. Applicants may appeal to the U.S. Department of Labor, Office of Administrative Law Judges, within 21 days of the date of the Grant Officer's notice providing reasons for not awarding financial assistance. The appeal may be for a part or the whole of a denial of funding. This appeal will not in any way interfere with the Department's decisions to fund other organizations to provide services during the appeal period.

(b) Failure to either request a debriefing within 10 days or to file an appeal within 21 days provided in paragraph (a) of this section constitutes a waiver of the right to a hearing.

(c) A request for a hearing under this section must state specifically those issues in the Grant Officer's notification upon which review is requested. Those provisions of the Grant Officer's notification not specified for review, or the entire final determination when no hearing has been requested within the 21 days, are considered resolved and not subject to further review.

(d) A request for a hearing must be transmitted by certified mail, return receipt requested, to the Chief Administrative Law Judge, U.S. Department of Labor, Suite 400, 800 K Street, NW., Washington, DC 20001, with one copy to the Departmental official who issued the determination.

(e) The decision of the ALJ constitutes final agency action unless, within 20 days of the decision, a party dissatisfied with the ALJ's decision, in whole or in part, has filed a petition for review with the Administrative Review Board (ARB) (established under Secretary's Order No. 2–96, published at 61 FR 19978 (May 3, 1996)), specifically identifying the procedure, fact, law or policy to which exception is taken. The Department will deem any exception not specifically urged to have been waived. A copy of the petition for review must be sent to the opposing party at that time. Thereafter, the decision of the ALJ constitutes final agency action unless the ARB, within 30 days of the filing of the petition for review, notifies the parties that the case has been accepted for review. Any case accepted by the ARB must be decided within 180 days of acceptance. If not so decided, the decision of the ALJ constitutes final agency action.

(f) The Rules of Practice and Procedures for Administrative Hearings Before the Office of Administrative Law Judges, set forth at 29 CFR part 18, govern the conduct of hearings under this section, except that:

(1) The appeal is not considered as a complaint; and

(2) Technical rules of evidence, such as the Federal Rules of Evidence and subpart B of 29 CFR part 18, will not apply to any hearing conducted under this section. However, rules designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination will be applied when the Administrative Law Judge conducting the hearing considers them reasonably necessary. The certified copy of the administrative file transmitted to the Administrative Law Judge by the official issuing the final

determination must be part of the evidentiary record of the case and need not be moved into evidence.

(g) The Administrative Law Judge should render a written decision no later than 90 days after the closing of the record.

(h) The remedies available are provided in § 641.470.

(i) This section only applies to multi-year grant awards.

§ 641.910 What grievance procedures must grantees make available to applicants, employees, and participants?

(a) Each grantee must establish, and describe in the grant agreement, grievance procedures for resolving complaints, other than those described by paragraph (d) of this section, arising between the grantee, employees of the grantee, subgrantees, and applicants or participants.

(b) The Department will not review final determinations made under paragraph (a) of this section, except to determine whether the grantee's grievance procedures were followed, and according to paragraph (c) of this section.

(c) Allegations of violations of Federal law, other than those described in paragraph (d) of this section, which are not resolved within 60 days under the grantee's procedures, may be filed with the Chief, Division of Older Worker Programs, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Allegations determined to be substantial and credible will be investigated and addressed.

(d) Questions about, or complaints alleging a violation of, the nondiscrimination requirements of Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Section 188 of the Workforce Investment Act of 1998 (WIA), or their implementing regulations may be directed or mailed to the Director, Civil Rights Center, U.S. Department of Labor, Room N–4123, 200 Constitution Avenue, NW., Washington, DC 20210. In the alternative, complaints alleging violations of WIA section 188 may be filed initially at the grantee level. See 29 CFR 37.71, 37.76. In such cases, the grantee must use complaint processing procedures meeting the requirements of 29 CFR 37.70 through 37.80 to resolve the complaint.

§ 641.920 What actions of the Department may a grantee appeal and what procedures apply to those appeals?

(a) Appeals from a final disallowance of costs as a result of an audit must be made under 29 CFR 96.63.

(b) Appeals of suspension or termination actions taken on the grounds of discrimination are processed under 29 CFR part 31 or 37, as appropriate.

(c) Protests and appeals of decisions not to award a grant, in whole or in part, will be handled under § 641.900.

(d) Upon a grantee's receipt of the Department's final determination relating to costs (except final disallowance of costs as a result of an audit, as described in paragraph (a) of this section), payment, suspension or termination or the imposition of sanctions, the grantee may appeal the final determination to the Department's Office of Administrative Law Judges, as follows:

(1) Within 21 days of receipt of the Department's final determination, the grantee may transmit by certified mail, return receipt requested, a request for a hearing to the Chief Administrative Law Judge, United States Department of Labor, 800 K Street, NW., Room 400 N, Washington, DC 20001 with a copy to the Department official who signed the final determination. The Chief Administrative Law Judge will designate an Administrative Law Judge to hear the appeal.

(2) The request for hearing must be accompanied by a copy of the final determination, and must state specifically those issues of the determination upon which review is requested. Those provisions of the determination not specified for review, or the entire determination when no hearing has been requested within the 21 days, are considered resolved and not subject to further review.

(3) The Rules of Practice and Procedures for Administrative Hearings Before the Office of Administrative Law Judges, set forth at 29 CFR part 18, govern the conduct of hearings under this section, except that:

(i) The appeal is not considered as a complaint; and

(ii) Technical rules of evidence, such as the Federal Rules of Evidence and Subpart B of 29 CFR Part 18, will not apply to any hearing conducted under this section. However, rules designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination will be applied when the Administrative Law Judge conducting the hearing considers them reasonably necessary. The certified copy of the administrative file transmitted to the Administrative Law Judge by the official issuing the final determination must be part of the evidentiary record of the case and need not be moved into evidence.

(4) The Administrative Law Judge should render a written decision no later than 90 days after the closing of the record. In ordering relief, the ALJ may exercise the full authority of the Secretary under the OAA.

(5) The decision of the ALJ constitutes final agency action unless, within 21 days of the decision, a party dissatisfied with the ALJ's decision, in whole or in part, has filed a petition for review with the Administrative Review Board (ARB) (established under Secretary's Order No. 2–96), specifically identifying the procedure, fact, law or policy to which exception is taken. The Department will deem any exception not specifically urged to have been waived. A copy of the petition for review must be sent to the opposing party at that time. Thereafter, the decision of the ALJ constitutes final agency action unless the ARB, within 30 days of the filing of the petition for review, notifies the parties that the case has been accepted for review. Any case accepted by the ARB must be decided within 180 days of acceptance. If not so decided, the decision of the ALJ constitutes final agency action.

§ 641.930 Is there an alternative dispute resolution process that may be used in place of an OALJ hearing?

(a) Parties to a complaint that has been filed according to the requirements of § 641.920 (a), (c), and (d) may choose to waive their rights to an administrative hearing before the OALJ. Instead, they may choose to transfer the settlement of their dispute to an individual acceptable to all parties who will conduct an informal review of the stipulated facts and render a decision in accordance with applicable law. A written decision must be issued within 60 days after submission of the matter for informal review.

(b) Unless the parties agree in writing to extend the period, the waiver of the right to request a hearing before the OALJ will automatically 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 will be treated as the final agency decision.

PART 645—PROVISIONS GOVERNING WELFARE-TO-WORK GRANTS

Subpart A—Scope and Purpose

Sec.
645.100 What does this part cover?
645.110 What are the purposes of the Welfare-to-Work program?
645.120 What definitions apply to this part?
645.125 What are the roles of the local and State governmental partners in the governance of the WtW program?
645.130 What are the effective dates for the Welfare-to-Work 1999 Amendments?
645.135 What is the effective date for spending Federal Welfare-to-Work formula funds on newly eligible participants and newly authorized services?

Subpart B—General Program and Administrative Requirements

645.200 What does this subpart cover?
645.210 What is meant by the terms ''entity'' and ''project'' in the statutory phrase ''an entity that operates a project'' with Welfare-to-Work funds?
645.211 How must Welfare-to-Work funds be spent by the operating entity?
645.212 Who may be served under the general eligibility and noncustodial parent eligibility (primary eligibility) provision?
645.213 Who may be served as an individual in the ''other eligibles'' (30 percent) provision?
645.214 How will Welfare-to-Work participant eligibility be determined?
645.215 What must a WtW operating entity that serves noncustodial parent participants do?